

AD-09
Ct No.16
11.03.2026
TN

FMAT 502 of 2025
IA No: CAN 1 of 2026

Sri Nikhil Kumar Nath and others
Vs.
Samar Kumar Nath, since deceased, represented by
Swarupa Nath and others

Mr. Shyamal Chakraborty,
Mr. Anirban Mitra,
Mr. Debnath Ganguly,
Mr. Amit Halder,
Ms. Madhumita Sadhukhan

.... for the appellants

Re: FMAT 502 of 2025

1. The present appeal has been preferred against the dismissal of an application for condonation of delay in filing an application for substitution after setting aside abatement of the suit filed by the plaintiff/appellant in the trial court and, consequentially, dismissing the said substitution application as well.
2. The learned Trial Judge proceeded primarily on the premise that the appellants could not substantiate as to how they got information of the death of the deceased defendant as well as that the deceased defendant is the own brother of the appellants and, as such, the appellants have failed to explain as to why they did not have knowledge of his death contemporaneously.

3. However, learned counsel for the appellants argues that the present litigation is between the brothers only and that the deceased defendant resides elsewhere than the plaintiffs/appellants. That apart, even during the cross-examination of the P.W.1, the fact of the death of the said deceased was not disclosed. It is submitted that the plaintiffs/appellants came to know of the demise of the deceased defendant only from social media and immediately thereafter, took out the application-in-question.
4. As such, it is argued that there was no scope for the appellants to know prior to such discovery as to the fact of the death.
5. Furthermore, the appellants, it is submitted, gave notice to the learned Advocate for the defendant to learn about the particulars of the heirs and legal representatives of the deceased defendant, even after which those were not disclosed to the appellants.
6. We find that a sufficient *prima facie* case for hearing the appeal on merits has been made out.
7. Accordingly, FMAT 502 of 2025 is admitted and shall be heard on the above questions and the other grounds taken in the memorandum of appeal.

Re: CAN 1 of 2026

8. CAN 1 of 2026 is an application for “appropriate order”, substantially seeking to bring on record relevant documents which were before the learned

Trial Judge and are germane for adjudication of the appeal. In view of its nature, the said application shall be heard along with the appeal.

9. The appellants shall put in postal costs, requisites and written-up notice forms for service of notice of the appeal on all the respondents, within a week from date.
10. Since substantially all relevant documents are annexed with CAN 1 of 2026, calling for the trial court records is dispensed with for the present.
11. The appellants shall prepare and file the requisite number of informal paper books without comparing with the records within six weeks from date.
12. Liberty is given to the parties to rely on further documents, if relevant for the adjudication of the appeal and produced in the trial court, at the time of hearing of the appeal, on circulation of the copies thereof to the other side.

(Sabyasachi Bhattacharyya, J.)

(Partha Sarathi Chatterjee, J.)