



2022:CHC-JP:5262

09-09-2022
Court No.1
FB.-1

**CALCUTTA HIGH COURT
CIRCUIT BENCH AT
JALPAIGURI**

SA 4 of 2022

-Vs.-

IA No. CAN 1 of 2022

Ajay Kumar Agarwal

-Vs-

Fakira Lodi

Mr. Ajay Kumar Agarwal
... petitioner-in-person.

The appellant/petitioner appears in-person.

The petitioner is aged about 74 years. The petitioner is regularly travelling from his place of residence at Mumbai to Jalpaiguri and also to Kalimpong to pursue cases of eviction filed by him against tenants.

Mr. Ajay Kumar Agarwal - the petitioner, appears-in-person today in support of IA No. CAN 1 of 2022 filed in connection with Second Appeal 4 of 2022. The petitioner is the appellant in SA 4 of 2022.

It is submitted by the petitioner that pursuant to the Order of the Hon'ble Division Bench dated the 23rd of May, 2019, the Second Appeal was admitted and a direction was also given to prepare the requisite number of Paper Book(s), which have already been prepared and filed in the Department. A copy of the Paper Book(s) has also been served on Learned Advocate for the sole respondent.



I.A. CAN 1 of 2022

The petitioner submits that I.A. CAN 1 of 2022 be taken up for consideration, which is an application for substitution of the legal heirs and successors-in-interest of the sole respondent, who died intestate on the 19th of January, 2021. The names of the legal heirs and successors-in-interest are pleaded at paragraphs 2 (a), (b), (c) and (d) of IA No. CAN 1 of 2022.

It is submitted that IA No. CAN 1 of 2022 was filed immediately after the death of the sole respondent was communicated to the petitioner-in-person by the Learned Advocate for the respondent. It is thus submitted that there are no laches on the part of the petitioner in filing IA CAN 1 of 2022. However, in view of the distance involved between the present place of residence of the petitioner at Mumbai and the Courts at Jalpaiguri and Kalimpong, IA No. CAN 1 of 2022, suffers from a delay of 91 days.

Mr. Agarwal files a notarized affidavit showing service of notice of IA No. CAN 1 of 2022 on the proposed four substituted respondents and also service of notices intimating them that the matter has been mentioned before the Hon'ble Single Bench sitting in Circuit at present. The notarized affidavit of the petitioner-in-person with the documents attached therewith be kept with the record.

Heard.

Sufficient grounds have been made out for condoning the delay in filling the substitution application which is IA No. CAN 1 of 2022.



Let the names of the proposed substituted heirs of the deceased sole respondent as pleaded in Paragraphs 2 (a), (b), (c) and (d) of IA No. CAN 1 of 2022, be implemented in place and stead of the deceased respondent.

The petitioner is granted liberty to file an amended cause title to SA 4 of 2022 incorporating the names of the substituted heirs.

Let the amended cause title be made a part of SA 4 of 2022.

Let the petitioner-in-person serve copies of the amended cause title on the substituted respondents.

Let the above directions be carried out within a period of four weeks from this date.

Regisry to also take the formal steps.

Accordingly, let there be an Order in terms of CAN 1 of 2022.

Considering both the age of the petitioner and the year of the suit filed in 2013 before the Learned Trial Court, let this matter appear in the list under the heading “**Hearing**” before the **next available Hon’ble Circuit Bench** for expeditious consideration, subject to its convenience.

Liberty to mention.

IA No. CAN 1 of 2022 stands accordingly **disposed of**.



Affidavit showing service filed in Court today be retained with the record.

All parties to act on a server copy of this order duly collected from the Official Website of the Hon'ble High Court Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalites.

(Subrata Talukdar, J.)