



2022:CHC-JP:5262

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

D/L. 5.
September 20, 2023
MNS

S. A. No. 4 of 2022
with
IA No: CAN 2 of 2023

Ajay Kumar Agarwal
Vs.
Rafique Ahmed Lodi and others

Mr. Ajay Singhal

...for the appellant.

Mr. Arjun Chowdhury,
Ms. Pratusha Dutta Chowdhury,
Ms. Riya Agarwal

...for the respondents.

1. Affidavit-in-opposition filed in connection with the application for substitution by the respondents in court be kept on record.
2. The application is otherwise in form.
3. The original plaintiff, since deceased, was appearing in person, for which the present petitioners, being the surviving legal heirs of the original appellant, were not aware of the requirement to file a substitution application.
4. In view of such sufficient reason having been made out for the delay, I am inclined to accept such reason and to allow the application.



5. Upon hearing the submissions of the parties and going through the materials on record, I am of the opinion that the prayer for substitution after setting aside abatement on condonation of delay ought to be allowed.
6. It may be mentioned here that although the application has been erroneously captioned as one under Order XXII Rule 3 of the Code of Civil Procedure, it contains the prayer for substitution after setting aside abatement on condonation of delay, which would suffice for grant of such reliefs.
7. Accordingly, in view of the above observations, CAN 2 of 2023 is allowed, thereby condoning the delay and setting aside the abatement and substituting the applicants as the appellants in SA No. 4 of 2022, in place and stead of the original appellant, since deceased.
8. There will be no order as to costs.
9. The office shall carry out the necessary consequential corrections in the cause title of the memorandum of appeal before the next Circuit.
10. The office shall also file a report on the next returnable date indicating as to whether the appeal is otherwise ready for hearing.
11. In view of appearance of the respondents through counsel, service of notice of appeal is dispensed with upon them.



12. Since it is submitted by learned counsel for the appellants that paper books have already been prepared, a copy of the said paper book shall be served on the learned Advocate for the respondents within a week from date.

13. Liberty to the parties to mention before the appropriate Bench in the next Circuit for inclusion in the list for hearing of the second appeal.

(Sabyasachi Bhattacharyya, J.)