

OD-20 to 22

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE

IA No. GA/1/2024  
In CSOS/1/2022

NANDITA JALAN  
-VS-  
MUKESH JALAN

&

CSOS/3/2022  
IA No. GA/1/2022

MUKHSH JALAN  
-VS-  
MANGLESH JALAN AND ANR

&

CS/93/2022  
IA No. GA/1/2022

MUKHSH JALAN  
-VS-  
MANGLESH JALAN

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : November 13, 2024.

Appearance:

Mr. Rupak Ghosh, Adv.  
Ms. Sulogna Mukherjee, Adv.  
Mr. Ashis Kr. Mukherjee, Adv.  
Mr. Saurabh Prasad, Adv.  
Mr. A. Kar, Adv.  
...for the plaintiff

Mr. Sakya Sen, Adv.  
Ms. Labanyasree Sinha, Adv.  
Ms. Somali Bhattacharya, Adv.  
Ms. Shuchismita Datta, Adv.  
...for the defendant

***In Re: IA No. GA/1/2024***  
***In CSOS/1/2022***

The Court: Mr. Rupak Ghosh, learned counsel, is appearing for the plaintiff.

Mr. Sakya Sen, learned counsel, is appearing for the defendant.

The legal heirs of the original plaintiff has filed the present application being GA/1/2024 praying for condoning the delay of 160 days to file the present application, setting aside the order of abatement of the originating summons suit and restoring the plaint to its original file and for allowing the amendment in the plaint as indicated in Annexure-C of the instant application and further directions.

Counsel for the applicant submits that the plaintiff, namely, Nandita Jalan, died on 7<sup>th</sup> January, 2024 leaving behind her husband and daughter. It is submitted that due to the death of the wife, the condition of the husband was not good and as such he was not in a position to take appropriate steps and only on 17<sup>th</sup> April, 2024 the applicant has approached the present advocate and discussed about the originating summons suit filed by his deceased wife and counsel for the plaintiff has informed about what steps is to be taken by the applicant.

Counsel for the applicant submits that the daughter of the deceased plaintiff is working in Copenhagen, Denmark and, accordingly, the applicant has informed his daughter with regard to the legal position as they have to file an application for recording the death of the original plaintiff and substituting their names in place of the original plaintiff. His daughter was not interested to involved in with the matter and due to

taking decision by the daughter, there was delay and finally the daughter has sent an e-mail to the applicant on 9<sup>th</sup> August, 2024 intimating that she has no objection if she has been made a proforma respondent in the present suit. Accordingly, on receipt of the said e-mail, the applicant has filed the present application.

Counsel for the applicant submits that due to delay in taking steps for substitution, the suit filed by the original plaintiff is abated and accordingly, he has prayed for condoning the delay for filing the present application and for setting aside the abatement.

Per contra, learned counsel for the defendant raised objection and submitted that in terms of the Will certain items and jewellery and ornaments were bequeathed to a family trust by the name of Manglesh Jalan Parivar Nidhi and the said Manglesh Jalan Parivar Nidhi was a trust created under the Deed of Trust dated October 23, 1976 for the benefit of the future wife of Manglesh Jalan, who is the present applicant. He submits that from a plain reading of Deed of Trust dated October 23, 1976, it appears that the beneficiary of the trust was the future wife of Manglesh Jalan that is the deceased plaintiff and as such the present applicant, being the husband, is neither the trustee nor the beneficiary of the said trust and as such, the question of substituting the applicant as substituted plaintiff does not arise.

Counsel for the defendant further submits that the jewellery bequeathed by Lilawati Jalan (since deceased) to Manglesh Jalan Parivar Nidhi for the benefit of the deceased plaintiff, strictly constitute *stridhan* of

the deceased plaintiff and as such, the applicant cannot claim any right over the same and thus he cannot be substituted.

Heard the learned counsel for the respective parties.

Perused the application and the documents.

The original plaintiff died on 7<sup>th</sup> January, 2024. Admittedly, there is a delay in filing the present application and in the meantime the originating summons suit filed by the original plaintiff has been abated.

Considering the averment in the application, this Court finds that the applicant has shown sufficient cause for non-filing of the application within the prescribed time. It is also found from the record that the daughter is in Denmark and she is not interested to join with the applicant to be substituted as one of the plaintiff and lastly only in the month of August, 2024 the daughter has informed the applicant that she has no objection if she has been made proforma respondent and, accordingly, the applicant has filed the present application.

As regards objection raised by the defendant for substitution, this Court finds that said objection can be considered at the time of disposing of the originating summons suit filed by the original plaintiff. This Court also finds that, at this stage, it would not be proper for this Court to say whether the applicant is having any right over the property left behind by the deceased plaintiff which she got in terms of the Will. This Court also finds that the objection raised by the defendant can be sufficiently adjudicated at the time of hearing of the originating summons suit.

In view of the above, this Court finds that the applicant has shown sufficient cause for non-filing of the application for recording the death of original plaintiff and for substitution of the legal heirs.

Accordingly, prayers (a) to (f) of the Master Summons are allowed.

GA/1/2024 is disposed of.

***In Re: CSOS/3/2022***  
***IA No. GA/1/2022***  
***&***  
***CS/93/2022***  
***IA No. GA/1/2022***

It is found that there are other two suits being CSOS/3/2022 and CS/93/2022 pending.

Let both suits be placed on 27<sup>th</sup> November, 2024.

(KRISHNA RAO, J.)