

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**APO/139/2023
WITH
CSOS/1/2017
IA NO: GA/1/2023**

**THE PARSI ZOROASTRIAN ASSOCIATION
VS
PROCHY N. MEHTA AND ORS.**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE AJAY KUMAR GUPTA

For the Appellant : Ms. Samira Grewal, Adv.
Ms. Amani Kayan, Adv.

For Respondent nos.
1 and 2 : Ms. Ajeya Chowdhury, Adv.
Mr. Debayan Sen, Adv.
Mr. Niket Ojha, Adv.

HEARD ON : 27.07.2026
DELIVERED ON : 27.07.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment and order dated May 11, 2023 passed in GA/8/2023 and GA/9/2023 in CSOS/1/2017.
2. Appellant before us is not a party to the originating summons suit. Appellant applied in such originating summons suit for dismissal of such suit by way of an application being GA/8/2023.

3. In the originating summons suit, the plaintiffs therein, applied for substitution and setting aside of abatement consequent upon the death of one of the defendants in such originating summons suit. Such application was registered as GA/9/2023.
4. By the impugned judgment and order, learned Single Judge dismissed the application of the appellant being GA/8/2023 and allowed the application of the plaintiffs being GA/9/2023.
5. Learned Advocate appearing for the appellant submits that, the appellant is not a party to the originating summons suit. She submits that, the plaintiffs in the suit came to Court with unclean hands. She draws the attention of the Court to the fact that, the defendant no. 1 to the suit expired on September 5, 2020. Application for substitution was made belatedly. She refers to the application for substitution. She submits that, the plaintiffs did not state the facts correctly in such application. The plaintiffs were well-aware of the death of the defendant no. 1 on September 5, 2020. There was no explanation for the delay in filing the application for substitution for about three years.
6. Learned Advocate appearing for the appellant submits that, no sufficient cause was shown in the application for condonation of delay. Since, the plaintiffs came to Court with unclean hands and did not show sufficient cause in the application for substitution and since, the application for substitution was filed belatedly, the same is liable to be dismissed.
7. Plaintiffs are represented.

- 8.** We find from the records that, the plaintiffs filed an originating summons suit being CSOS/1/2017. In such suit, two persons are arranged as plaintiffs while there are three defendants.
- 9.** Defendant no. 1 expired on September 5, 2020. Defendant no. 1 was sued in the originating summons suit in the capacity of a trustee of a trust.
- 10.** Records placed before us demonstrate that, on the death of the defendant no. 1 on September 5, 2020, new trustees were appointed in place and stead of the defendant no. 1 by the members of the trust. However, such fact was not brought to the notice of the Court in which, the originating summons suit was pending till the application of the plaintiffs being GA/9/2023 was filed.
- 11.** It appears from the records placed before us that, post of the trustee consequent upon the death of the defendant no. 1 was filled up on September 29, 2022, when, two new trustees were appointed.
- 12.** The originating summons suit was filed for the purpose of interpreting various provisions of the Indenture of Trust dated September 19, 1915 of Late Ervad Dhunjeebhoy Byramjee Mehta's Zoroastrian Anjuman Atash Adaran. Apparently, one of the issues falling for consideration in the originating summons suit is the right of the children born of a Parsi mother and non-Parsi father who were Zoroastrian by faith worshiped at the Atash Adaran and

whether the trustees possessed any authority to prevent such children from worshipping at such Atash Adaran.

- 13.** The plaintiffs in their application for substitution of the deceased defendant no. 1 pleaded that, the defendants did not inform the plaintiffs as to the death of the defendant no. 1. The plaintiffs also pleaded that, the defendants did not take any steps for the purpose of substituting the defendant no. 1 with the trustees appointed on May 29, 2022.
- 14.** In the application for substitution, the plaintiffs pleaded that, even after the death of the defendant no. 1, right to sue survives and that the remaining trustees continued to represent the trust in the suit.
- 15.** We do not find that, the plaintiffs came with unclean hands as sought to be contended on behalf of the appellant. Significantly, the appellant is yet to be treated as a party to the suit. The suit was not filed under Order I Rule 8 of the Code of Civil Procedure, 1908.
- 16.** On the death of the defendant no. 1, who was sued in the capacity as a trustee of the trust, it was the duty of the defendants to bring such facts to the notice of the Court. The defendants did not do so. Plaintiffs thereafter, filed the application by way of GA/9/2023.
- 17.** Right to sue of the plaintiffs survived the death of the defendant no. 1. The plaintiffs put forward a plausible cause for the delay in filing the application for substitution.

- 18.** Defendant no. 2 expired on August 29, 2025. He was substituted by an order dated November 27, 2025.
- 19.** So far as the application being GA/8/2023 of the appellant is concerned, we do not find that, CSOS/1/2017 is framed in such a manner, that, it can be classified as not to disclose of cause of action or being barred by law.
- 20.** In such circumstances, we find no grounds to interfere with the impugned judgment and order.
- 21.** APO/139/2023 along with connected application are dismissed, without any order as to costs.

(DEBANGSU BASAK, J.)

- 22.** I agree.

(AJAY KUMAR GUPTA, J.)