

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

F.A.T 3 of 2026
IA No: CAN 1 of 2026
CAN 2 of 2026

Sri Biswajit Halder and others
Vs.
Sk. Rabiul Islam and others

For the appellants : Mr. Siva Prasad Ghose
Mr. Sujit Sahoo

For the respondent
Nos. 1 to 5 : Mr. Rabindra Narayan Dutta
Mr. Sibasis Ghosh
Mr. Arkoday Mukherjee

Heard on : 20.07.2026

Judgment on : 20.07.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against a preliminary decree of partition, also declaring the title deeds in favour of the appellants invalid.

2. Learned counsel for the appellants, by placing reliance on the several supplementary affidavits filed in connection with the condonation application as well as the averments made in the said application, contends that the appellants only came to know about the impugned judgment and decree on November 18, 2025, during a hearing before the concerned BL & LRO at Barrackpore.
3. Thereafter, certified copies of the impugned judgment and decree were applied for and the present appeal has been preferred.
4. With regard to the plea of the respondents that summons of the suit was recorded to have been served on the defendant no.7/appellant no.2 vide order dated February 28, 2024, learned counsel for the appellants submits that the veracity of such order is belied by the application filed by the respondents themselves in the trial court under Order V Rule 20 of the Code of Civil Procedure, where it was categorically admitted by the respondents that the summons sent to the defendant nos.1 to 7 had returned with the remark that the addressees could not located.
5. Learned counsel further argues that the notice issued on July 17, 2025 by the Chairman, North Dum Dum Municipality, which

was alleged to have been served on the appellants, was actually never served.

- 6.** Thus, it is contended that a liberal view ought to be taken by this court while condoning the delay in preferring the appeal.
- 7.** Learned counsel further insinuates that if the trial court records are called for, it will be found that there is no bailiff report regarding due service of summons even on the defendant no.7/appellant no.2, let alone the other appellants.
- 8.** Learned counsel for the respondents relies on a chart of alleged suppressions by the appellants in their application under Section 5 of the Limitation Act and the corresponding supplementary affidavits.
- 9.** Learned counsel for the respondents primarily places reliance on the orders dated September 28, 2024 and April 29, 2024 passed in the suit, where the learned Trial Judge respectively recorded due service of summons on defendant no.7/appellant no.2 and substituted service of summons having been effected on the defendant nos.1 to 6, 8 and 9.
- 10.** It is further argued that from the certified copy of the impugned judgment annexed to the memorandum of the present appeal, it will be evident that the same was applied for on June 4, 2025,

whereas the appellants have made out in their condonation application that their first knowledge of the impugned judgment and decree was only after November 18, 2025, which is palpably an untruth.

- 11.** Learned counsel further points out that from the materials-on-record, it will be evident that the notice issued by the Chairman, North Dum Dum Municipality dated July 17, 2025 was duly received by the appellants much prior to their purported pleaded knowledge of the impugned judgment and decree.
- 12.** Learned counsel thus argues that in view of the suppression of such material facts on the part of the appellants, the condonation application ought to be dismissed.
- 13.** In support of such proposition, learned counsel cites *Ramjas Foundation and another vs. Union of India and others*, reported at 2011 (1) ICC 639.
- 14.** Upon a perusal of the materials before us, we find that the averments made in the condonation application and the supporting supplementary affidavits cannot be relied on insofar as their credibility is suspect.
- 15.** The first aspect of the matter which catches the eye is that the appellants have categorically averred and submitted before us

that their first knowledge of the impugned judgment and decree was acquired after November 18, 2025, whereas it is palpable from the reverse of the cover page of the certified copy of the impugned judgment filed along with the memorandum of the present appeal itself that such certified copy was applied for on June 4, 2025, that is, about five months prior to the pleaded first date of knowledge of the appellants.

- 16.** It is absurd that such certified copy was applied for retrospectively by the appellants five months before coming to know of the concerned judgment itself.
- 17.** Although it has been sought to be insinuated by the appellants that such application for certified copy was made by the appellants' learned Advocate at the relevant juncture in the trial court without knowledge of the appellants, the very fact that the self-same certified copy has been used for preferring the present appeal indicates the complicity of the appellants in the above regard.
- 18.** Apart from such palpable untruth, we also find that the statements made in the application of the plaintiffs/respondents under Order V Rule 20 of the Code of Civil Procedure, to the effect that summons upon defendant nos.1 to 9 were returned

with remark that addressee cannot be located, can easily be explained away since it is the custom and practice of civil courts to direct service of summons both ways, both personally by registered post by the plaintiffs as well as through court.

- 19.** The recording in the relevant order of the trial court dated February 28, 2024, to the effect that the summons had been served on defendant no.7/appellant no.2, indicates that the said service was effected through court, whereas the statement in paragraph no.2 of the Order V Rule 20 application as to summons having been returned with the remark that addressee cannot be located pertains to the alternative mode of service resorted to by the plaintiffs themselves.
- 20.** As is well-settled, presumption of correctness is attached with all official and judicial acts, which has not been rebutted in the present case insofar as the service of summons were recorded in the Trial Court's orders to have been effected on the defendant no.7/appellant no.2 as early as on February 28,2024.
- 21.** We cannot lose sight of the fact that the appellant no.2, who had prior knowledge of the suit, is a co-appellant with the other defendants before us.

- 22.** Thus, the knowledge of defendant no.7/appellant no.2 about the suit at least prior to February 28, 2024 itself is a sufficient indicator that the other appellants also had access to such information.
- 23.** The ratio laid down in *Ramjas Foundation (Supra)* is apt in the context, where the Hon'ble Supreme Court, upon considering previous judgments, took note of the dictum that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.
- 24.** Hence, lenience cannot be extended insofar as the present application for condonation of delay is concerned, in view of the untrue methods adopted by the appellants before this court.
- 25.** In such view of the matter, we disbelieve the case made out in the condonation application and the supporting supplementary affidavits and come to the finding that sufficient reason for condonation of the delay in preferring the appeal has not been made out.
- 26.** Accordingly, CAN 2 of 2026 is dismissed on contest.
- 27.** Consequentially, FAT 3 of 2026 is dismissed as time-barred.
- 28.** CAN 1 of 2026 is disposed of as well.

- 29.** There will be no order as to costs.
- 30.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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