

22-06-2021

Item no. 3
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

FMA No.485 of 2021
Dharam Pal Chadha & Sons

-vs-

Sk. Abdul Kabir & Ors.

with

CAN No.1 of 2021

and

CAN No.2 of 2021

Mr. Aniruddha Mitra

Mr. Anirban Ghosh

...for the appellant

The impugned order dated 21st October 2020 was made by the learned court below in the COVID-19 pandemic period. Hence the marginal delay in preferring this appeal is condoned. The section 5 Limitation Act application – CAN No.1 of 2021 – is accordingly allowed.

An affidavit of service is on record. None appears for the respondents.

The point involved in this appeal is very short. We entertain this appeal dispensing with all formalities.

The impugned order does not advance any reason by the learned judge for not entertaining the subject application made by the plaintiff-appellant. A mere reiteration that an earlier interim order was vacated by the court and that the defendants-respondents were raising construction on the suit property was not sufficient ground to reject the application. Why the application before the court was rejected was to be specified with some intelligible reasons.

For those reasons, we set aside the impugned order dated 21st October 2020 and remand the matter to the

learned court below with a direction that the application of the plaintiff-appellant under section 94 read with section 151 of the Code of Civil Procedure, 1908 is to be heard out and disposed of by the learned court, upon notice to and upon hearing the respondents, by a reasoned order within three months of communication of this order.

All points are kept open before the court below.

The appeal and the connected application (CAN No.2 of 2021) are disposed of accordingly.

[I.P. Mukerji, J]

[Aniruddha Roy, J]