

Item-53	26-04-2022	FA 22 of 2020 CAN 1 of 2019 (old CAN 12055 of 2019) CAN 2 of 2019 (old CAN 12057 of 2019)
sg	Ct. 8	

Nimai Chandra Mondal
Versus
Balai Chandra, since deceased,
represented by legal heirs namely,
Krishna Mondal & Ors.

Mr. Kartick Bhattacharyya, Adv.
...for the appellant

Mr. Arnab Roy, Adv.
Mr. Satyam Mukherjee, Adv.
...for the respondent

In Re: CAN 1 of 2019 (old CAN 12055 of 2019)

This is an application for condonation of delay of 177 days in preferring the memorandum of appeal. Initially, the petitioner filed a revisional application challenging the order impugned. The revisional Court dismissed the application on 25th September, 2019 on the ground that the order impugned is appealable and a leave was given to the appellant to prefer an appeal after taking back the certified copy of the impugned order. The time consumed in the said proceeding, in our view, requires to be excluded in computing limitation.

On such consideration, we allow this application for condonation of delay.

CAN 1 of 2019 (old CAN 12055 of 2019) is accordingly, disposed of.

In Re: CAN 2 of 2019 (old CAN 12057 of 2019)

On the basis of an application filed by the respondents for dismissal of the suit on the ground of res judicata, the Trial Court

decided the said issue without evidence. In a plea of res judicata to succeed, the Court is required to examine the pleading issue and the evidence. It cannot be decided by an application under Order VII Rule 11 or by any other application.

The learned Counsel for the respondents, in supporting findings of the learned Trial Court has argued that the Trial Court has exercised power under Order XIV Rule 2 of the Code of Civil Procedure. After such power is to be exercised, the Court has to come a finding that the facts are admitted and the suit is maintainable of being disposed of only on a question of law.

There is no such finding of the Court in that regard. Under such circumstances, the impugned order dated 30th January, 2019 is set aside.

The trial Court is directed to decide the suit on merits including the question of res judicata, if raised by the defendants before the Trial Court at the time of settlement of issues.

We request the Trial Court to decide the suit as expeditiously as possible without granting any adjournment to either of the parties unless it is unavoidable.

FA 22 of 2020 and CAN 2 of 2019 (old CAN 12057 of 2019) are accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)