

03.03.2022
SL No.41
Court No.8
(gc)

**FMA 582 of 2021
With
CAN 1 of 2020
(Old No: CAN 1127 of 2020)
with
CAN 2 of 2021**

**Smt. Hasikana Polley @ Hasina Polley & Anr.
Vs.
Sri Kalu Koley & Ors.**

(Via Video Conference)

Mr. Animesh Paul,
.....for the Appellants.
Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray,
...for the Respondents.

**Re: CAN 1 of 2020
(Old No: CAN 1127 of 2020)**

This application for condonation of delay has already
been disposed of vide order dated 7th April, 2021.

**Re: FMA 582 of 2021
with
CAN 2 of 2021**

There has been culpable negligence on the part of the appellants in not assisting the Trial Court for early disposal of a suit filed in 2008. The First Appellate Court noticing that the present appellants did not turn up to cross-examine the witness of the plaintiffs, closed the evidence and passed a judgment. We think that the Trial Court was perfectly justified in doing so, as the mercy cannot be misplaced. However, the First Appellate Court being merciful set aside the decree of the Trial Court and

sent the matter to the Trial Court for fresh remand. This order has created confusion as the order dated 2nd August, 2018 appears to have permitted the appellants three opportunities to cross-examine the witness from the side of the plaintiffs/respondents but has remained silent with regard to the evidence to be adduced by the defendants, if they so desire. The cross-examination of the plaintiffs' witness is over.

We allow the defendants' prayer to adduce evidence subject to payment of cost of Rs.10,000/- to the plaintiffs within two weeks from date, failing which, the Trial Court shall proceed with the hearing of the suit as directed by the Appellate Court. Both the parties shall be present on each and every date to be fixed by the Trial Court for evidence and in the event the said defendants or their witness failed to appear on the date fixed, it would be open for the Trial Court to close the evidence and to pass judgment after hearing the arguments of both the parties. The Trial Court shall prepare a time schedule for the Trial Court of the suit subject to payment of costs by the defendants for each stage as indicated above.

We request the learned Trial Court to conclude the proceeding preferably within a period of 8 months from the date of communication of this order and subject to compliance by the defendants.

With the aforesaid observation, the appeal being FMA 582 of 2021 and the application being CAN 2 of 2021 stand disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)