

Item-22
sg

07-02-2022

Ct. 8

FMA 1338 of 2021
CAN 1 of 2021
CAN 2 of 2021

Rina Roy & Anr.
Versus
Kanchan Bouri & Ors.

(Through Video Conference)

Mr. Sanjoy Ghosh, Adv.

...for the appellants

Ms. Sohini Chakraborty, Adv.

...for the respondents

In Re: CAN 1 of 2021

This is an application filed under Section 5 of the Limitation Act.

We have considered the report filed by the Additional Stamp Reporter.

In view of the order of the Hon'ble Supreme Court dated 23rd September, 2021 in SMW(C) No. 3 of 2020, the appeal is in time.

The application for condonation of delay, being CAN 1 of 2021 is disposed of.

In Re: FMA 1338 of 2021 with CAN 2 of 2021

By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.

The appellants are the defendant nos. 10 and 2 in the suit. The appellants are aggrieved by the ex-parte ad-interim order dated 29th January, 2021 in a suit for partition.

The learned Counsel appearing on behalf of the appellants, submits that the defendant nos. 9 and 15 died before institution of the

suit.

The learned Counsel for the appellants has further submitted that the shares are not in dispute and the learned Trial Court may pass a preliminary decree on the basis of the admitted shares. It is further submitted that the parties have amicably agreed to settle the dispute and during the pendency of such discussion partition suit has been filed suppressing such fact.

Ms. Sohini learned Counsel appearing on behalf of the respondents/plaintiffs have submitted that applications for substitute of the said deceased defendants have been filed before the learned Trial Judge and might have been disposed of in the mean time.

The appellants shall file written objection to the injunction application within a period of two weeks from date. Rejoinder, if any, shall be filed within two weeks thereafter.

The learned Trial Judge is requested to dispose of the injunction application as expeditiously as possible, preferably within a period of six months from the date of disposal of the substitution petition filed by the plaintiffs in respect of the original defendant nos. 9 and 15 without granting any adjournments to either of the party unless it is unavoidable.

It is needless to mention that in the event the defendants admitted the shares of the plaintiffs, the learned Trial Court shall pass a preliminary decree on admission.

We make it clear that we have not gone into the merits of the case. The learned Trial Judge shall decide the matter without being influenced by the observations made by us in this matter.

The appeal, being FMA 1338 of 2021 and the application, being CAN 2 of 2021 are 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.)