

Items- 16-01-2023 FMA 537 of 2015
23-24. CAN 1 of 2014 (old CAN 7217 of 2014)

sg Ct. 8 Susmita Aich
Versus
Suman Aich

And

FA 283 of 2016
CAN 1 of 2015 (old CAN 9432 of 2015)

Susmita Aich
Versus
Suman Aich

Mr. Susenjit Banik, Adv.
Mr. Soumyajit Bhatta, Adv.
Ms. Sutapa Mukhopadhyay, Adv.
...for the appellant

Mr. Subhash Ch. Sarkar, Adv.
...for the respondent

Both the appeals are taken up together and disposed of by
this common order.

The appellant suffered an ex-parte decree. There was a delay
of about four months in preferring the appeal. The delay was not
intentional and does not reflect any culpable negligence on her
part.

In an adversarial proceeding, a client is dependant upon her
Advocate. A litigant should not suffer due to inaction of her
Advocate. Unfortunately, the learned Additional District &
Sessions Judge, Fast Track Court-I at Barakpore, District 24
Parganas (North) has failed to appreciate the explanation offered
for not being able to appear on the date when the suit was decreed
ex-parte. Unless the conduct is malafide, intentional and suffered
from culpable negligence, the Court should not penalise the

litigant as the said decree appears to have been passed on the basis of the evidence only adduced by the plaintiff and it does not really decide the facts and issues as the other side did not appear. It proceeded on the basis of the doctrine of non-traverse. In fact, the defendant filed its written statement but had failed to appear on the date before the trial court.

Under such circumstances, we restore the suit and set aside the ex-parte decree.

We request the Trial Court to dispose of the suit preferably within a period of six months from the date of communication of this order without granting any adjournment to either of the parties. In the event the wife fails to appear on the date fixed by the learned Trial Judge, it would be open for the Trial Court to proceed with the matter in the absence of the wife. The Trial Court is requested to prepare a time schedule for the trial and shall not depart from the schedule unless there are unavoidable circumstances.

Both the appeals succeed. The impugned orders are set aside.

The connected applications of both the appeals are also disposed of.

The learned Registrar Administration (L&OM) is directed to communicate this order to the learned Additional District and Sessions Judge, Fast Track Court-I at Barakpore, District 24 Parganas (North) immediately for compliance.

(Uday Kumar, J.)

(Soumen Sen, J.)