

05 04.12.23

Ct. No. 04

akd

F.M.A.T. 468 of 2022

CAN 1 of 2023

CAN 2 of 2023

Kananbala Rana alias Kanan Rana & Ors.

Vs.

Ram Chandra Rana & Ors.

Mr. Nilanjan Bhattacharjee,

Mr. Arpan Guha.

... for the appellants.

Mr. Rabindranath Mahata,

Mr. Aritra Shankar Ray.

... for the respondent

nos. 1 to 19.

Re: CAN 1 of 2023

This is an application seeking condonation of delay in filing the instant appeal beyond the period of limitation provided therefor.

After considering the averments made in paragraph nos. 3, 4 and 5 of the instant application and upon hearing the respective Counsels, we are satisfied that the appellants were prevented by sufficient cause in not preferring the appeal within the period of limitation.

Accordingly the application for condonation of delay being CAN 1 of 2023 is allowed. The delay in preferring the appeal is hereby condoned.

Re: Appeal

The instant appeal arises from a judgement and order of remand passed by the first Appellate Court.

It is sought to be contended before us that there was no justification on the part of the first Appellate Court in remanding the matter, as the Appellate Court could have disposed of the matter on the basis of the documents forming part of the record.

Out attention is drawn to the fact that after the impugned judgement and order of remand is passed, the present appellants participated in the suit and, in fact, filed the 'written argument'.

According to the learned Advocate appearing for the respondents, the matter is virtually complete after remand and have reached the advanced stage where the judgement can be passed in relation to a preliminary decree.

Since the appellants have participated in the said suit after remand is made and have further proceeded in progress thereof, we do not find that it is a fit case where the appeal should be admitted.

It thus appears that the appellants have no intention to challenge the said order after such participation in the suit which is evident and apparent from their conduct as noted above.

Accordingly, the appeal is dismissed. Consequently the connected application being CAN 2 of 2023 is also dismissed.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

