

63 **19.12.**
2023
Ct. No. 04

Ab

FMAT 539 of 2023
IA No. CAN 1 of 2023
IA No. CAN 2 of 2023

Mrs. Mousumi Nath
Vs.
Mr. Babulal Verma @ B. L. Verma and others.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. Kaustav Bhattacharya,
Ms. Sinjini Chakraborty,
Ms. Priyanka Jana.
... for the appellant.

Mr. Meghajit Mukherjee,
Ms. Vidisha Gupta.
... for the respondent nos. 2 to 6.

Re: CAN 1 of 2023.

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

After perusing the averments made in the instant application and upon hearing the respective Counsels, we are satisfied that the appellant was prevented by sufficient cause in not preferring the instant appeal within the statutory period of limitation.

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

The office is directed to formally register the appeal.

The appellant says that the Trial Court applied a wrong principle of law in rejecting an application for temporary injunction and did not take into consideration the respective stands of the parties in their pleadings

filed before it. It is submitted that the respondents have put an excavator at the plot no. 471 with an intent to make a construction thereat.

The Counsel for the respondents on instruction submits that his clients have already disclosed their stand in the Trial Court and he is instructed to disclose such stand in the instant appeal as well that the plot no. 471 is recorded as green land and, therefore, there is no question of any construction to be undertaken thereupon. It is further submitted that till date the respondents have not applied for conversion of the green land into any other category of land and, therefore, there is no apprehension with regard to the alleged changing the nature and character as well as making a construction thereat.

However, the appellant relies upon the photographs stated to have been taken of the said plot no. 471 depicting the machine having put thereupon to which the Counsel for the respondents seeks time to take necessary instruction from his clients.

In such view of the matter, we do not find that there is any eminent threat with regard to the changing the nature and character as well as making construction at the plot no. 471.

In view of the above, we do not find that the ultimate decision of the Trial Court in rejecting the application for temporary injunction is liable to be interfered with. However, we do not make any comment to the observations recorded in the impugned order. We are conscious that such observations are *prima facie* in nature and have no bearing at the time of final hearing of the said suit.

In the event, the parties alter their stand, it is open to the parties to apply before the Trial Court for an appropriate order and the disposal or rejection of the application shall not stand in the way of deciding the said application based upon the changed circumstances.

With these observations, the appeal and the connected application being CAN 2 of 2023 are disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)