

27-02-2026

ct no. 13

Sl. 5

sp

FMA 322 of 2009

With

CAN 6 of 2026

With

CAN 7 of 2026

Baidyanath Mandal

-Versus-

Kamini Mandal & Anr.

Mr. Ambu Bindu Chakraborty,
Mr. Partha Sarathi Das.

...for the appellant.

CAN 7 of 2026.

1. CAN 7 of 2026 has been filed seeking condonation of delay of 628 days in filing CAN 6 of 2026.

2. It is submitted that the appellant is a day labourer and was working in various parts of the State under a construction company. He could not contact his advocate. The advocate engaged is also old and aged.

3. Having regard to the above facts, this Court is inclined to condone the delay in filing CAN 6 of 2026.

4. Hence, the delay is condoned.

5. Accordingly, CAN 7 of 2026 is allowed and disposed of.

CAN 6 of 2026.

6. Sufficient grounds have been made out explaining the absence of the appellant and/or its advocate on 10th April, 2024.

7. Hence, the order is recalled and the appeal is restored to its original file and number.

8. CAN 6 of 2026 is allowed and disposed of.

FMA 322 of 2009

9. The appeal is directed against judgment and order dated 7th January, 2006 being Order No. 23 passed in Misc. Case No. 87 of 2005 (Baidya Nath Mandal Vs. Kamini Mandal).

10. By the said order dated 7th January, 2006, the learned Trial Judge refused to entertain an application under Order 9 Rule 13 of the Code to seek recall of an ex parte decree dated 10th September, 2003 passed in the suit.

11. The Trial Judge found that the appellant was served with the summons in the suit. The summons were affixed on the door of the residence of the appellant/defendant in the suit being Partition Suit No. 1 of 2000 that was pending before the learned Civil Judge (Sr. Division) at Malda. This was done by the bailiff, who found that summons was refused, in the presence of 2 witnesses

12. The application under Order 9 Rule 13 of the Code was filed with a delay of 2 years. The Trial Judge did not find any valid explanation for the delay in filing the application under Order 9 Rule 13 since summons were already served on the defendant. The Trial Judge also refused to accept the story of the appellant that he came to know of the ex parte decree dated 10th September, 2003 only when the Commissioner of Partition visited the suit premises.
13. This Court is of the view that the impugned order dated 7th January, 2006 passed by the Trial Judge in refusing to entertain the application under Order 9 Rule 13 or condoning the delay in filing the application is calls absolutely no interference. The summons in the suit must be deemed to have been served on the defendants when they refused to accept the same.
14. The Commissioner of Partition already appointed in the matter shall report before the Trial Court, if not already filed.
15. The report shall be circulated amongst all the parties. The Trial Judge shall, thereafter,

proceed and consider passing of final decree as he may deem fit and proper.

16. With the aforesaid, FMA 322 of 2009 shall stand disposed of.
17. There shall be no order as to costs.
18. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Md. Shabbar Rashidi, J.)