

9th September,
2025
(AK)
11

F.A.T 205 of 2025
IA No: CAN 1 of 2025

Sudipta Mukherjee
Vs.
Bandana Mukherjee

Mr. Gautam Chakraborty
Mr. Ayam Basu
Mr. Swagatam Deb

...for the appellant.

Mr. Narayan Chandra Ghosh

...for the respondent.

Mr. Tanmoy Mukherjee
Mr. Soumava Santra

...Advocate (appearing upon service
of notice as per direction of court).

In Re: CAN 1 of 2025

1. The present application has been filed for condonation of delay of about 119 days in preferring the appeal.
2. The primary grounds for the delay, as sought to be portrayed in the application, are as follows:

“5. The appellant states that inspite of all the aforesaid the said Advocate Soumava Santra although assured from time to time that he was in the midst of preparation of the draft Memorandum of Appeal and he would be making the draft ready as early as possible but in spite of that much time has been spent by the said advocate and ultimately in or about 16th April, 2025 the said advocate expressed that he was too busy in respect of several other matters for which he became unable to

prepare the draft. On that day the said advocate handed over the papers to the appellant/petitioner without the draft Memorandum of Appeal which he expressed he was not able to prepare.

A Photocopy of relevant communication being the Whatsapp Communication dated 28.04.2025 as sent by the petitioner to the said advocate recording the aforesaid matter and which was not replied by the said advocate to the petitioner, is annexed hereto and marked with the Letter-“B”.

6. *The appellant also states that he is residing with his own elder brother Mr. Subrata Mukherjee and sister-in-law. His elder brother, a senior citizen aged about 62 years, had been suffering from serious eye ailment and as such he had been admitted to hospital on 29.11.2024 for Right Eye operation i.e. RE Phaco surgery with Hydrophobic IOL implantation, made under Topical Anesthesia. Be it mentioned here that as the only adult male member of the family, the appellant was solely responsible for managing his elder brother's care during the pre and post operative phases. In addition to arranging hospital visits, the appellant had to administer medicines and had been providing continuous physical support to his elder brother as the only male member in the family and the appellant also had to maintain his job and attend to essential household responsibilities in the meantime. In-spite of these unavoidable obligations, he established timely communication with his aforesaid advocate sometime over phone.*

A photocopy of the eye treatment medical report of the elder brother of the appellant/ husband is annexed hereto and marked with the Letter - "C".

6A. It is stated that again the appellant's said elder brother namely Mr. Subrata Mukherjee was diagnosed with jaundice and was initially advised to take complete rest for a period of three weeks. Subsequently, based on medical review, the doctor advised an additional three weeks of rest, followed by a further two-week rest period. The appellant had to accompany his brother to the doctor for medical advice and check up on 08.02.2025, 28.02.2025, 18.03.2025, 02.04.2025, and 14.04.2025, and for medical examinations on 08.02.2025, 27.02.2025, 20.03.2025, and, 02.04.2025. During those prolonged phase, the appellant was exclusively engaged with his elder brother. Throughout this time, the appellant was also managing his service duties, household responsibilities, and his brother's ongoing treatment.

A photocopy of the medical reports of the elder brother of the appellant/husband is annexed hereto and marked with the letter-"D" collectively.

7. The appellant/petitioner/husband much depended upon the Advocates including Mr. Soumava Santra, Advocate but ultimately it appears that Mr. Soumava Santra, Advocate became unable to do the work in preparation of the draft of Memorandum of Appeal and failed to prepare the required work due to his busy schedule."

3. Insofar as the alleged eye ailment of the elder brother of the petitioner is concerned, we do not find much merits in the said flimsy pretext, in the absence of any specific details having been pleaded that the elder brother was completely unable to look after his treatment by himself.
4. A case has also been made out that the said elder brother was diagnosed with Jaundice, apart from his eye operation, in similar lines.
5. However, the primary refrain of the pretexts for filing the appeal late is found in paragraph nos.5 and 7 of the application.
6. In paragraph no.5, a particular learned Advocate, who is a very junior member of the Bar and is present before us, led by his senior, upon specific direction by us for the said learned Advocate to be served, although assured from time to time that he was in the midst of the preparation of the draft Memorandum of Appeal, could not make the draft ready.
7. Ultimately, it is alleged, the said Advocate expressed that he was too busy in respect of several other matters for which he was unable to prepare the draft.
8. It is also alleged that on that day, the said Advocate handed over the papers to the appellant without the

draft Memorandum of Appeal which he expressed he was not able to prepare.

9. Also, it has been alleged in paragraph no.7 of the application that the appellant was much dependent upon the Advocates, including the said learned Advocate, but ultimately the said learned junior member of the Bar was unable to do the work of preparation of the draft of Memorandum of Appeal and failed to prepare the required work due to his busy schedule.
10. We have also heard the said learned Advocate, who is present in court along with his senior, Mr. Mukherjee.
11. Upon hearing the version of the said learned Advocate, it is clear to us that although the initial conference fee of the senior was paid, no amount was paid to the said learned Advocate by the appellant by way of professional fees and expenses of not only drafting the Memorandum of appeal but also for filing of the appeal and/or having the same settled, which gave rise to the delay.
12. Learned counsel for the appellant also relies on a purported WhatsApp communication annexed at page-27 (Annexure-B) of the present application which indicates that after taking back the file from the erstwhile learned Advocate, the appellant sent such message to the said learned Advocate that

although all documents were handed over to the said learned Advocate, much delay was occasioned on the part of the said learned Advocate, which might have been due to the busyness of the said Advocate.

13. It was further informed thereby that, be that as it may, the appeal was being filed in the High Court but due to the long delay, a limitation petition is being required to be filed.
14. It is evident from the very tenor of the judgment in Bengali vernacular (roughly translated and paraphrased above) that the said message was sent *post facto*, after the file was taken back from the erstwhile Advocate, for the purpose of preparing a ground for the present condonation of delay application.
15. As such, much reliance cannot be placed on the same.
16. We cannot but take judicial note of the fact that a practice is developing of late of blaming erstwhile Advocates, without any specific proof of the allegations made against such Advocate and/or furnishing any document to show that any fees were paid to the said Advocate or that the litigant approached the Advocate in time.
17. Such practice is most unfortunate, since in most cases, the said learned Advocate, against whom the

allegation is made, is not present before the court and does not have a platform to ventilate his or her grievance or present their defence.

18. We take particular note of the fact that the learned Advocate against whom the allegations are made comes from the junior section of the Bar and is more vulnerable than his senior counterparts.
19. The making of blanket allegations against such an Advocate, taking undue advantage of his less number of years in the Bar, is all the more unfortunate and merely shows the *mala fides* on the part of the petitioner.
20. Such blame game cannot be given a premium with the blessings of the court in each and every case.
21. It has been held by the Supreme Court and several High Courts time and again that the reasons furnished for the delay and the quality thereof, and not the span of the delay, is what is material in considering an application for condonation of delay.
22. In view of our above discussions, we are of the opinion that the condonation application has been founded on flimsy grounds and unnecessary and unwarranted aspersions have been cast on a learned junior member of the Bar merely to serve the purpose of the appellant.

23. We strongly deprecate such practice and are of the opinion that the present application has been made *mala fide*.
24. Although learned counsel for the respondent files the respondent's affidavit-in-opposition to the condonation application, we choose not to look into the same in view of the fact that the application does not merit being entertained at the threshold and since we have not given any opportunity to the appellant to controvert the allegations in the opposition.
25. Even on the basis of the averments made in the application itself, we are of the opinion that the same ought to be dismissed.
26. Accordingly, CAN 1 of 2025 is dismissed on contest, however, without any order as to costs.
27. Consequentially, FAT 205 of 2025 is dismissed as time-barred.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)