

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FAT No. 129 of 2022

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CAN 1 of 2022

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CAN 2 of 2022

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CAN 3 of 2024

Ratan Lal Banerji
-vs-
Sripurna Sen Chowdhury

For the appellant : Mr. Probal Kumar Mukherjee, Snr. Adv.
Mr. Bhaskar Mukherjee,
Mr. D. Dutta.

For the respondent : None.

Heard on : March 19, 2025.

Judgment on : March 19, 2025.

Sabyasachi Bhattacharyya, J.:

1. Despite service of copies of the applications, none appears for the respondent at the time of call. Affidavit-of-service filed in Court today be kept on record.

Re: CAN 1 of 2025 (Condonation of delay)

2. Upon perusal of the averments made, we are satisfied that sufficient explanation for the delay in preferring the appeal has been made out.
3. Accordingly, CAN 1 of 2022 is allowed, thereby condoning the delay in preferring FAT No. 129 of 2022.
4. There will be no order as to costs.
5. Let the appeal be deemed to stand registered and admitted.

Re: FAT No. 129 of 2022

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CAN 2 of 2022 (injunction application)

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CAN 3 of 2024(addition of party application)

6. CAN 2 of 2022 is an application for injunction in connection with the appeal whereas CAN 3 of 2024 is an application for addition of party.
7. Since the defendant/respondent did not appear and contest in the Court of first instance, we invoke the provision of Order XLI Rule 14(4) of the Code of Civil Procedure and dispense with service of notice of appeal on the sole respondent.
8. The appeal itself is thus taken up for hearing.
9. The conspectus of the appeal is very short.

10. The plaintiff/appellant filed a suit for specific performance of a contract. The learned Trial Judge was of the opinion that in view of the Government of West Bengal being a necessary party, since permission is required from the said authority to transfer the suit property, the suit was dismissed on the ground of non-joinder of such necessary party.
11. Upon a careful scrutiny of the impugned judgment, we find that the merits of the case were not entered into by the learned Trial Judge, since the suit was dismissed on the sole ground of non-joinder of necessary party.
12. It is well-settled that in the event a necessary party has not been impleaded, before dismissing the suit on such technical ground, the learned Court of first instance is required to give an opportunity to the plaintiff to rectify such curable defect by impleading the necessary party. In the absence of the same, the impugned judgment is vitiated by error of law.
13. Since the necessary documents are all annexed to the present applications and the Memorandum of Appeal, we hereby take up the main appeal for hearing and proceed to adjudicate the same.
14. The defect of non-joinder of necessary party, on which ground the suit was dismissed, has been sought to be cured by the plaintiff/appellant by way of filing of an application for addition of party, bearing CAN 3 of 2024, where it has been prayed that the

necessary authority to give the permission to transfer the suit property, that is, the Principal Secretary, Government of West Bengal, Urban Development Department, be added as a respondent.

15. Since an appeal is a continuation of the suit and the Appellate Court, under Order XLI Rule 33 read with Section 107 of the Code of Civil Procedure, has co-equivalent powers as the learned Trial Judge, read in connection with Order I Rule 10 of the Code, to implead a necessary party, we exercise such power and accordingly allow CAN 3 of 2024, thereby directing the appellant to implead the Principal Secretary, Government of West Bengal, as a party to the suit.
16. Accordingly, CAN 3 of 2024 is disposed of in the light of the above observations.
17. In view of the above findings, the defect of parties stands cured, thereby mitigating the sole ground of dismissal of the suit by the learned Trial Judge.
18. Accordingly, FAT No. 129 of 2022 is allowed *ex parte*, thereby setting aside the impugned judgment and decree dated February 28, 2022 passed by the learned Judge, Seventh Bench, City Civil Court at Calcutta in Title Suit No. 432 of 2018 and remanding the matter to the learned Trial Judge for re-hearing of the suit on merits upon impleading the Principal Secretary, Government of

West Bengal, Urban Development Department, DF-8, Nagarayan, Salt Lake, Kolkata- 700 064 as defendant no. 2 in the suit and upon issuance of proper notice of the suit on the said added defendant.

19. It is made clear that we have not entered into the merits of the suit since we do not intend to usurp the jurisdiction of the learned Trial Judge, who has not assessed the materials on record and/or decided the suit on merits at the first instance.
20. It will be open to the learned Trial Judge to decide the suit independently on merits on all issues, without being influenced in any manner whatsoever by any of the observations made above on the merits of the suit.
21. In view of the long pendency of the matter, it is expected that the learned Trial Judge shall make endeavour to dispose of the suit as expeditiously as possible.
22. There will be no order as to costs.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)