

Items 2. 14-01-2025

sg Ct. 12

**FMAT 263 of 2023
CAN 1 of 2024
CAN 2 of 2024**

Sainabak-V & Anr.
Versus
Namsoon Chinese Church & Anr.

Mr. Dhiraj Trivedi, Sr. Adv.
Mr. Bikash Kumar Singh
Ms. Swapna Jha
...for the appellants

Mr. Pradip Kr. Kundu
Mr. Diptyendu Kr. Pal
...for the respondents

In Re: CAN 2 of 2024

1. This is an application for condonation of delay. There is a delay of four days in preferring the appeal and the delay is sufficiently explained.

2. The delay of four days in preferring the appeal is condoned and the application for condonation of delay is allowed.

3. CAN 2 of 2024 is thus, disposed of.

In Re: FMAT 263 of 2023 with CAN 1 of 2024

4. In a suit for eviction being Ejectment Suit No. 432 of 1999 against V.C. Ummer Kutty, a decree for eviction was passed on 10th June, 2009. The

5. The decree-holder filed an execution case in 2021 being Ejectment Execution Case No. 3 of 2021. Despite the said decree, a suit was filed by one Sainabak-V, wife of late V.C. Umer Kutty for declaration and permanent injunction. In the

said suit, one K.P. Shameem was described as co-plaintiff and a constituted attorney and partner of a business being carried out in the suit premises along with Sinabak-V.

6. The learned Counsel for the decree-holder submits that in spite of repeated attempts, no service could be effected upon Sainabak-V who claims to be wife of late V.C. Umer Kutty.

7. In view of the eviction decree dated 10th June, 2009 and an execution proceeding is pending, a separate suit for declaration in such a situation is not maintainable. Any right, title and interest of any of the parties in Title Suit No. 376 of 2021 needs to be adjudicated in the execution proceeding.

8. On such facts and circumstances, we are not inclined to interfere with the order passed by the learned Judge, 11th Bench.

9. However this order shall not prevent the present appellant to take appropriate steps in accordance with law.

10. Since no affidavit-in-opposition is filed, the allegations are deemed to have been denied.

11. With the aforesaid observations, the appeal and the applications are disposed of. However, there shall be no order as to costs.

12. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)

