

16th July, 2025

Item no. DL 8
Court No. 10

Asraf, A.R.(Ct.)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Case No. **SMAT 8 of 2025**
with
CAN 1 of 2025
Can 2 of 2025

In the matter of :

SHREE KHAITAN HARWARE STORES represented by
SMT. PARAMESWARI DEVI KHAITAN & ANR.
.... Appellants

VS.

M/S. NALWA ENGINEERING CO. LTD. & ANR.
....Respondents

For the Appellants :

Mr. Subhasish Pachhal

....Advocate

For the Respondent no.1 :

Mr. Anjan Ray

Mr. Subhajit Chowdhury

....Advocates

In Re : I. A. No. CAN 1 of 2025

1. CAN 1 of 2025 is an application for condonation of delay in filing the present appeal.
2. The appeal arises out of an order (deemed decree) passed within the contemplation of Order XXI Rules 99 to 101 of the Code of Civil Procedure, 1908 (for short, "the Code").
3. Learned counsel for the appellant submits that the appellant, under erroneous impression, had initially preferred a civil revisional application against the impugned deemed decree. Upon realization of the said error at the time of moving

the application, the same was withdrawn, with liberty to approach the appropriate forum in accordance with law.

4. As such, it is contended that the delay of about 11 days in preferring the appeal be condoned.
5. Learned counsel appearing for the respondents vehemently opposes the prayer for condonation of delay. It is submitted that the appellants have stated in the condonation application itself that it was the appellants who instructed the advocate to prefer an appeal. It being so, it is argued that the appellants must have had knowledge about the maintainability of an appeal and not a civil revision, against the impugned deemed decree.
6. Secondly, it is argued that nothing has been explained in the application as to the dates when the requisite stamps were notified and / or deposited and / or when the certified copy of the impugned judgment and deemed decree was made ready for hearing.
7. Further, it is contended that the date of filing of the revisional application, as given in the application for condonation of delay, is also incorrect, as appearing from information obtained from the official web portal.

8. Upon hearing learned counsel for the parties, we find that although the Stamp Reporter's report indicates that the delay is about 11 days, the delay is roughly of 13 days. Be that as it may, we find sufficient explanation having been given in the application for condonation.
9. The application for certified copy of the deemed decree, which was passed on September 19, 2024, was made on October 07, 2024, as evident from the reverse of the cover page of the certified copy thereof. The requisite stamp was notified on March 28, 2025, on which date it was deposited and the certified copy was made for hearing.
10. As such, the limitation period of 90 days expired about 13 days prior to the appeal being filed. The memorandum of appeal was ultimately presented before this Court on June 25, 2025. In the interregnum, a revisional application was filed.
11. We cannot rule out entirely a bona fide misapprehension in the mind of the learned advocate preferring the revision application as to whether an appeal or revisional application is maintainable, since the nuances of Order XLI Rule 101 read with Rule 103 of the Code might have escaped the notice of the advocate.
12. In any event, we do not find anything on record to attribute mala fides to the appellant in preferring

the appeal late. Furthermore, the delay is minimal and, as such, we take a lenient approach in consonance with the conventional view in respect of condonation applications.

13. Hence, CAN 1 of 2025 is allowed on contest, thereby condoning the delay in preferring SMAT 8 of 2025.

In Re : SMAT 8 of 2025

1. The appeal is taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.
2. The present appeal has been preferred against the concurrent findings of both the Courts below turning down the appellant's application under Order XXI Rules 99 to 101 of the Code.
3. The appellants are two of the partners of the respondent no.2 / partnership firm. The respondent no.1 filed an eviction suit and obtained a decree therein against the respondent no.2 / firm without impleading the present appellants, who are partners and, accordingly, represent the interest of the partnership firm.
4. It is argued that the independent right claimed in the capacity of partners by the appellants was not adjudicated by the Courts below at all by proceeding on the premise that the appellants

have been held to be sub-tenants in respect of the decretal property.

5. Upon a perusal of the judgments of both the Courts below, we find that the Courts arrived at a concurrent finding that a prior application filed by the appellants under Order I Rule 10 of the Code for impleading themselves as parties to the eviction suit was dismissed by the learned Trial Judge on the premise that an illegal sub-tenant is not entitled to be impleaded in an eviction suit.
6. The said order was never assailed by the present appellant and, as such, attained finality.
7. Thus, the principle of res judicata and/or constructive res judicata apply inasmuch as the self-same issue which was involved in the the application for addition of party under Order I Rule 10 of the Code, which was finally adjudicated by the Trial Court, could not have been reopened by the appellants in the garb of an application under Order XXI Rules 99 to 101 of the Code in the execution proceedings afresh.
8. Thus, we find that there is no scope for interference with the concurrent findings of facts arrived at by the both the Courts below and further that no substantial question of law is involved.

9. Hence, SMAT 8 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
10. Consequentially, CAN 2 of 2025 stands dismissed as well.
11. However, there will be no order as to costs.
12. All parties shall act on the basis of server copy of this order duly downloaded from the official website of this Court.
13. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)