

Item- 21-08-2025
13.

sg Ct. 16

**FMAT 247 of 2025
CAN 1 of 2025
CAN 2 of 2025**

Kaushalya Shaw alias Koushalya Shaw
Versus
Raj Kishore Shaw

Mr. Pratick Ghosh
Mr. Sourav Guha
Mr. Prasad Bhattacharyya
Mr. Shravani Ghosh
...for the appellant
Mr. Sourav Sen, Sr. Adv.
Ms. Subhangi Bhattacharya
...for the respondent

In Re: CAN 2 of 2025

1. CAN 2 of 2025 is the application for condonation of delay. There is a delay of 692 days in preferring the appeal.
2. Sufficient cause being shown for not being able to file the memorandum of appeal within the time of limitation, the delay of 692 days in presenting the memorandum of appeal is condoned.
3. CAN 2 of 2025 is thus disposed of.

In Re: FMAT 247 of 2025 and CAN 1 of 2025

4. The plaintiffs are the appellants. The plaintiffs were unable to appear on the date of hearing of the suit fixed on 27th June, 2022. The learned Trial Court dismissed the suit due to non-appearance of the learned Counsel for the plaintiffs. The learned Trial Court has elaborately discussed the conduct of the plaintiffs but did not

disregard the fact that the plaintiffs were represented by an Advocate who also appeared to have represented the appellants before the learned Trial Court.

5. The defendants entered appearance and filed their written statement. The learned Trial Court discussed elaborately the requirement of filing of affidavit under Order 27 Rule 4 and has also referred to the non-compliance of the various provisions in order to sustain the order for dismissal of the suit. However, in the instant case, the suit was dismissed for non-appearance of the plaintiffs on the date fixed for hearing of the suit. The suit otherwise was not ready for hearing on 27th June, 2022.
6. Ordinarily, the plaintiffs should not have non-suited merely because the plaintiffs failed to appear on the date fixed for hearing of the suit. In a judicial system existing in this country, the plaintiffs have relied upon the advocate and for the fault of the advocate, the plaintiffs should not suffer. The plaintiffs have in their deposition clearly stated that they were in touch with the learned Advocate and they followed the advice of the learned advocate. If the advice of the advocate acts to the detriment of the plaintiffs, the Court should not penalize the plaintiffs for not being able to proceed with the suit.
7. On such consideration, we set aside the order under appeal.
8. However, we request the learned Civil Judge (Senior Division), 3rd Court, Barasat, North 24 Pargana, to pass peremptory direction with regard to procedural matters in making the said suit ready for hearing and in the event of

any lapses and/or default on the part of the plaintiffs in conducting the suit, it would be open for the learned Civil Judge (Senior Division), 3rd Court, Barasat to proceed with the suit or pass any such order or direction as may deem fit and property.

9. However, the plaintiff shall pay cost of Rs.10,000/- to the defendants within two weeks from date as condition precedent for the plaintiffs to participate in all further proceeding in default, the order of the learned Trial Court shall revive.
10. The appeal and the applications are accordingly, disposed of.
11. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)