

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. 363 of 2017
+
CAN 1 of 2017 (Old CAN 6514 of 2017)
+
CAN 2 of 2017 (Old CAN 6515 of 2017)
+
CAN 3 of 2025

Champak Pramanik and others
Vs.
Smt. Soma Roy and others

For the appellant : Mr. Avishek Prasad,
Mr. Sourodeep Singha

For the respondent no. 1 : Mr. Probal Kumar Mukherjee,
Mr. Rajat Dutta

Heard on : May 14, 2025.

Judgment on : May 14, 2025.

Sabyasachi Bhattacharyya, J.:

Re: CAN 3 of 2025 (condonation of delay)

1. The present application for condonation of delay has been filed in respect of an appeal preferred on July 7, 2017 against a final decree of partition dated July 20, 2013.
2. Learned counsel appearing for the appellants/petitioners submits that, against the preliminary decree dated July 30, 2012 passed in the partition suit from which the present appeal arises, a first appeal was preferred, bearing FAT No. 29 of 2013. In connection with the said first appeal against the preliminary decree, a coordinate Bench, vide order dated June 20, 2013, had, *inter alia*, recorded the apprehension of the appellants that the Trial Court might give effect to the final decree. In such context, it was observed that let the process be completed; however, the actual allotment, if made, must not be given effect to without express leave being obtained from the said Court.
3. Learned counsel for the appellants/petitioners submits that, as such, in view of the said order dated June 20, 2013, the final decree of partition, although passed in the interregnum, did not have any effect in law. The said position changed with the disposal of the appeal by a

judgment dated March 22, 2017. Upon such disposal, the present appeal has been preferred on July 7, 2017.

4. Calculating the period taken for obtaining the certified copy and other ancillary periods, the delay in the present case is submitted to be about eighteen days.

5. Learned senior counsel appearing for the respondent no. 1 controverts such submissions and contends that merely because a co-ordinate Bench had directed that the final decree of partition shall not be given effect to does not mean that the decree did not have an existence.

6. As such, it is argued that the limitation period began to run from the date of passing of the final decree.

7. Upon a careful consideration of the submissions of the parties, we find that the arguments made by the appellants/petitioner are not tenable in the eye of law.

8. The very fact that, vide order dated June 20, 2013 passed in FAT No. 29 of 2013, the co-ordinate Bench observed that no effect would be given to the final decree presupposes that court permitted the final decree to be passed.

9. The said observation of the co-ordinate Bench merely operated, at best, as a stay of operation of the said decree.

10. However, such an order does not translate into the final decree, which has already been validly passed, freezing in time. There is no provision within the four corners of the Limitation Act, 1963 contemplating that in such situation the limitation period will stop running.

11. Thus, the position of law sought to be portrayed by the appellants is not tenable from any perspective.

12. As such, the grounds given in the present application for condonation of delay cannot be accepted.

13. Accordingly, CAN 3 of 2025 is dismissed on contest without any order as to costs.

14. Consequentially, FAT No. 363 of 2017 is dismissed as time-barred.

15. In view of dismissal of the appeal, CAN 1 of 2017 (Old CAN 6514 of 2017) and CAN 2 of 2017 (Old CAN 6515 of 2017) are disposed of as well.

16. Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)