

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

FAT 419 of 2016
IA No: CAN 2 of 2023

Bazlul Haque and others
Vs.
Nurul Islam, since deceased, represented by his legal heirs
Ansahara Bibi and others

For the appellants	:	Mr. Sujit Kumar Ghosh
For the respondent nos. 1 to 4	:	Mr. Dhananjay Banerjee, Mr. Jisan Iqbal Hossain, Mr. Praloy Hazra
Heard on	:	09.04.2025
Judgment on	:	09.04.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against an *ex parte* final decree of partition. The delay in preferring the appeal is of about 2705 days.

2. Learned counsel for the petitioners submits that the petitioners were not aware of the *ex parte* decree impugned herein and, as such, could not prefer the appeal earlier. It is submitted, in consonance with paragraph no. 8 of the application that the appellants/petitioners, who were defendants in the suit, came to know of the *ex parte* dismissal of the suit in the month of December, 2015.
3. However, we find that even going by such statement, the appeal was filed on August 10, 2016, that is, eight months after the petitioners admittedly came to know of the *ex parte* decree. There is no explanation whatsoever as regards the said eight months' delay.
4. More importantly, it has been pleaded in paragraph no. 8 of the application that the fact of the said *ex parte* decree was not informed by the then learned Advocate for the appellants in the court below.
5. Learned counsel also hands over a copy of the judgment and decree passed in Partition Suit No. 269 of 2009, which is dated June 29, 2016.
6. Learned counsel for the appellants/petitioners, in support of his contention that a liberal view has to be adopted by the court while deciding an application for condonation of delay, cites a Division Bench judgment of this court in the matter of *Aloke Kumar Chattopadhyay vs. Chief Engineer (I), Irrigation and Waterways Directorate, Government of W. Ben*, reported at (2013) 3 CHN (Cal) 656 as well as another coordinate Bench judgment passed in the matter of *Sri Basudev Ghosh & Others. Vs. Sri Gopinath Ghosh & Others (FAT 74 of 2022)* dated December 06, 2022.

7. Learned counsel appearing for the respondent nos. 1 to 4 opposes the said prayer and submits that no *bona fides* have been disclosed in the explanation.
8. Upon hearing learned counsel for the parties, we find that there are certain factors which are required to be considered while deciding the present application. Under normal circumstances, it is not merely the span of delay which is to be considered but also the conduct of the petitioners. However, in case of enormously long delays, since valuable rights accrue in the meantime in favour of the other party, the court is required also to take into account such period.
9. In the present application, apart from no explanation being given for the eight months between the appellants acquiring knowledge and preferring the appeal, as discussed above, the petitioners cast the entire blame on the learned Advocate appearing for the petitioners in the court below. It is evident from the said admission that the petitioners were represented by an Advocate and, as such, had appeared in the partition suit in which the impugned decree was passed. Yet, there is not a single averment in the present application that the petitioners had been diligently contacting their Advocate during the relevant period and taking information of their case, if not regularly, at least at reasonable intervals.
10. The laches of the petitioners is evident from the fact that even the preliminary decree in the suit was passed *ex parte*.
11. That apart, there is precious little in the application to indicate that the appellants were all along diligent and had been contacting their

learned Advocate in the court below. The situation in a pending appeal before this court, where the personal appearance of the litigant on every date is not necessary, is different from that of the trial courts. In the court of first instance, there are several occasions during the pendency of the suit when the litigant is required to appear personally, either for affirming affidavits or for filing applications and/or taking other consequential and incidental steps.

12. In the present case, we do not find a single pleading or any proof as to the appellants having ever contacted their learned Advocate in the court below at any point of time to enquire about the whereabouts or status of the suit.
13. Although the courts are lenient in favour of the applicants in condonation of delay applications, such lenience is not extended as a matter of course to litigants who are palpably negligent in their conduct.
14. In fact, the *mala fides* of the appellants is also evident, since the judgment and decree in Partition Suit No. 269 of 2009, another partition suit regarding the self-same property where the present appellants were also defendants, was passed on June 29, 2016, two months after which the present appeal has been filed.
15. We are informed, on our query, by the learned Advocate for the petitioners that the petitioners have not preferred any appeal against the said judgment and decree passed in the Partition Suit No. 269 of 2009.

16. As such, it is clear that the petitioners were not aggrieved by the said decree. It is also clear from the chain of circumstances that the petitioners were obviously advised, after the said decree was passed in Partition Suit No. 269 of 2009, that unless an appeal is preferred against the present impugned decree, their rights in terms of the other decree might be adversely affected, which in all probability prompted the petitioners to prefer the present appeal at this belated stage, after having sat tight over the matter for almost a decade.
17. Be that as it may, we do not find any explanation worth the name whatsoever to show that the petitioners were diligent with regard to the conduct of the litigation in the court below. As such, in the absence of any explanation for the delay, we are unable to condone the huge delay of about ten years in preferring the present appeal.
18. Insofar as the cited judgment in the case of *Aloke Kumar Chattopadhyay* (supra) is concerned, the factual situation there was different. In the said case, the coordinate Bench had observed, while deciding an application for restoration of a matter pending in this court, that the petitioner therein was a resident of Purulia which is situated at a long distance and that he was an unemployed person and might not have knowledge about court procedures and might have been supremely confident that his lawyer will look after his interest.
19. However, there are several distinguishing features in the present case. First, as we observed above, the role of a litigant while conducting an appeal or writ petition or revision in this court, which does not require

any day-to-day personal presence of the litigant, is entirely different from that in an original civil suit pending in the court of first instance where regular presence of the parties might be required. Thus, the present petitioners were utterly negligent inasmuch as they did not take any information about the suit during the huge period in-between. Secondly, the present case is not one where the litigation is pending in this court and the petitioner is a resident of a far-off district, as in the reported judgment. The suit-in-question, in which the *ex parte* impugned decree was passed, was going on very much within the residential district of the petitioners and, as such, the grounds for condonation of delay in the cited judgment are not applicable to the present petitioners.

20. Insofar as the other coordinate Bench judgment in the matter of *Sri Basudev Ghosh & Others* (supra) is concerned, in the said case, the Pandemic period intervened. The shelter of the said ground, however, is not available to the petitioners since the impugned decree was passed about ten years prior to the preference of the appeal, that is, in the year 2006.
21. That apart, the facts and circumstances of the said case are entirely different from the present and, as such, the ratio attributed by the court in the said case is not applicable herein.
22. In view of the above, we are not inclined to condone the delay in preferring the present appeal.
23. Hence, IA No: CAN 2 of 2023 is dismissed on contest.
24. Consequentially, FAT 419 of 2016 is dismissed as time-barred.

25. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

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