

16.09.2025
Item No.18
Ct. No.01
Saikat

FMAT/352/2025
with
IA NO: CAN/1/2025
with
CAN/2/2025

SOUMITRA OJHA
VS.
SIDDHERTHA OJHA

Mr. Pinaki Ranjan Mitra, Adv.

...For the Appellant

In Re: CAN 1 of 2025

1. This is an application for condonation of delay of 5 days in filing the memorandum of appeal.
2. Being satisfied with the sufficient cause being indicated for not being able to file the appeal within the period of limitation, the delay in filing the appeal beyond the statutory period is hereby condoned.
3. Can 1 of 2025 is, accordingly, allowed and disposed of.

In Re: FMAT 352 of 2025

4. In spite of service the respondent is not represented.
5. Affidavit-of-service filed in Court is taken on record.
6. In terms of our earlier order we incline to take up the appeal in absence of the respondent as we had made it clear that in the event, in spite of service the respondent/plaintiff is not represented, we may, in the event, allow the condonation of day, and decide the appeal itself.
7. We have read the impugned order. There is no discussion in the said order for rejection under Order 39 Rule 4 as we

find that the applicant has made out a case for consideration and for suitable modification and/or vacating the order of *ad interim* injunction.

8. Admittedly, the *ad interim ex parte* order of injunction was obtained and it was a positive case of the appellant herein that the plaintiff has obtained the order by suppressing the material facts. The defendant has a tenant in respect of the one shop room as clearly stated in the said application for modification and variation of the impugned order. The said application under Order 39 Rule 4 was disposed of in a very cryptic manner, which is as follows:-

“Upon perusal of the application dated 15.01.2024 filed under Order 39 Rule 4 read with Section 151 of CPC by the Defendant, Written Objection filed by the Plaintiff, Counter Affidavit and/or Affidavit-in-Opposition against Written Objection filed by the Defendant and also considering the materials available on record, this Court finds that the consideration of right, title, interest and possession of the Plaintiff over the suit property can only be adjudicated at the time of trial.”

9. It does not disclose reasons for not accepting the contention of the defendant. When an order is appealable that is incumbent upon the learned trial court to clearly state the reason, may be briefly, so that the First Appellate Court can really understand and appreciate the reason behind the order and judgment. Reason is a soul of a judgment.

10. In view of the fact that the impugned order is an unreasoned order and it does not appear that the contention of the appellant has been considered in a proper perspective, we set aside the impugned order and

direct the learned Judge, Bench-XIII, City Civil Court, Calcutta, to hear the application for vacating the *ad interim* order within one week from date of communication of the order and dispose of the application at the earliest on merits and put reasons without being influenced any observation made in this order.

11. With the aforesaid observation and direction, the appeal as well as the pending application are disposed of.
12. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

[SOUMEN SEN, C.J.(ACTING)]

(APURBA SINHA RAY, J.)