

Item- 9. 17-09-2025

sg Ct. 1

**FMAT 365 of 2025
CAN 1 of 2025
CAN 2 of 2025**

Rakesh Parui
Versus
Partha Pramanick @ Paramanick & Ors.

Mr. Shamik Chatterjee
Mr. Aditya Bikram Mahata
Mr. Sahil Kabir
Ms. Jayita Das

...for the appellant

1. Affidavit of service filed in Court is taken on record.
2. In spite of service, the respondents are not represented nor any accommodation is prayed for on behalf of the respondents.

In Re: CAN 1 of 2025

3. This is an application of condonation of delay. There is a delay of 65 days in preferring the memorandum of appeal.
4. Sufficient cause being shown for not being able to file the present appeal within the time stipulated, we condone the delay of 65 days in preferring the memorandum of appeal.
5. CAN 1 of 2025 is, accordingly, disposed of.

In Re: FMAT 365 of 2025 with CAN 2 of 2025

6. The appeal is arising out of an order dated 20th March, 2025 in a suit filed by the respondent/plaintiff for declaration and injunction. The plaintiff alleged that in

spite of sufficient time being given to the present appellant to complete the construction in terms of a Joint Venture Agreement dated 9th March, 2019, the construction was not completed and the agreement was cancelled by serving legal notice. In spite of such cancellation, the defendant no.1, with the help of other defendants, is trying to raise construction over the schedule property.

7. The learned Counsel for the appellant submits that the plaintiff and the defendant nos. 2 and 3 are brothers and save and except the present plaintiff, none had cancelled the said agreement or objected to raising of construction in terms of the original agreement.
8. It appears that the building sanction plan was issued on 4th September, 2021 and the construction was to be completed within 30 months from the date of the sanction plan. The said building is yet to be completed within the aforesaid period.
9. It is submitted that a prayer was made for extension of time to complete the construction. However, as on date, the sanction plan has not been renewed. It is further submitted that the defendant no.1 namely, the appellant herein, was not served with the injunction application. However, the order speaks otherwise.
10. The learned Counsel for the appellant has further submitted that leave may be given to file appropriate application for recalling of the said order as substantial

progress has been made by the appellant towards construction and it will be inequitable and unjust at this stage to prevent the defendant no.1/appellant to complete the said construction. It is submitted that by reason of the fact that the said agreement has been acted upon, certain valuable right has been accrued in favour of the plaintiff and in favour of the appellant and in the absence of the said appellant, the said issue cannot be decided.

11. We have carefully read the order of the learned First Appellate Court. On the basis of the facts narrated and stated in the said impugned order, the view taken by the learned First Appellate Court appears to be the plausible view.
12. However, we give liberty to the appellant to apply for variation or vacation or modification of the said order under Order 39 Rule 4 of the Code of Civil Procedure.
13. In the event any such application is filed upon notice to the plaintiff, the learned Trial Court may decide the said application on merits.
14. In deciding the said application, the learned Trial Court shall not be influenced by any observations made in the impugned order or in this order.
15. With the aforesaid observations, the appeal and the application stand disposed of.
16. Leave is given to correct the name of the respondent no.3 in course of the day.

17. Urgent photostat certified copy of the order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

[Soumen Sen, C.J. (Acting)]

(Apurba Sinha Ray, J.)