

AD-14&15
Ct No.16
21.01.2025
TN

FAT 294 of 2024
IA No: CAN 1 of 2024
CAN 2 of 2024

Maya Mandal
Vs.
Gayanath Mandal and others

With

FAT 290 of 2024
IA No: CAN 1 of 2024
CAN 2 of 2024

Tapesh Mandal and others
Vs.
Gayanath Mandal and another

Mr. Prosenjit Mukherjee,
Mr. Jahangir Hossain,
Ms. Tiyasa Ghosh,
Ms. Babita Pramanik

....for the appellants
in both the matters

Mr. Avishek Prasad,
Mr. Sourodeep Singha

....for the respondent no.1
in both the matters

In re: FAT 294 of 2024
CAN 1 of 2024
CAN 2 of 2024

1. CAN 1 of 2024 is an application for condonation of delay in preferring the appeal.
2. Learned counsel for the appellant submits that the *ex parte* decree which has been challenged in the present appeal was passed *de hors* the law.
3. Learned counsel for the respondents rightly points out that no explanation whatsoever has been furnished for the delay in preferring the appeal. In

paragraph no.6 of the condonation application, the appellant has stated that the appellant derived knowledge of the suit when the Partition Commissioner came to the spot for inspection.

4. It is also admitted in the same paragraph that the Partition Commissioner submitted his report on October 07, 2021.
5. It is everybody's knowledge that a Partition Commissioner is appointed and holds inspection only upon passing of the preliminary decree. The report of the Commissioner cannot be submitted prior to his visiting the locale. It is obvious, then, that the Partition Commissioner in the present case must have visited the property for inspection at least prior to the submission of his report on October 07, 2021. Since the appellant categorically admits having knowledge of the suit when the Commissioner came to the spot, the knowledge of the suit has to be attributed to the appellant at least prior to October 07, 2021, when the Partition Commissioner's report was submitted. The present appeal, however, has been filed inordinately long thereafter, only on September 13, 2024.
6. Even an application under Order IX Rule 13 of the Code of Civil Procedure was filed, as per the averment of the appellant, on March 13, 2023, that is, more than one and a half years after the

submission of the Commissioner's report. Be that as it may, no explanation whatsoever has been given for the huge delay from prior to October 07, 2021, by which date the appellant admittedly came to know of the suit, till September 13, 2024, when the present appeal was filed. Thus, even on the face of the application for condonation of delay, no ground whatsoever has been made out for condonation of the delay in preferring the appeal.

7. Accordingly, CAN 1 of 2024 is dismissed on contest.
8. Consequentially, FAT 294 of 2024 is dismissed as time-barred.
9. CAN 2 of 2024 also stands dismissed accordingly.
10. There will be no order as to costs.

In re: FAT 290 of 2024
CAN 1 of 2024
CAN 2 of 2024

1. CAN 1 of 2024 is an application for condonation of delay in preferring the appeal.
2. Learned counsel for the appellants submits that the *ex parte* decree which has been challenged in the appeal was passed *de hors* the law.
3. Learned counsel for the respondents rightly points out that no explanation whatsoever has been furnished for the delay in preferring the appeal. In paragraph no.6 of the condonation application, the appellants have stated that the appellants derived

knowledge of the suit when the Partition Commissioner came to the spot for inspection.

4. It is also admitted in the same paragraph that the Partition Commissioner submitted his report on October 07, 2021.
5. It is everybody's knowledge that a Partition Commissioner is appointed and holds inspection only upon passing of the preliminary decree. The report of the Commissioner cannot be submitted prior to his visiting the locale. It is, thus, obvious that the Partition Commissioner in the present case must have visited the property for inspection at least prior to submission of his report on October 07, 2021. Since the appellants categorically admit having knowledge of the suit when the Commissioner came to the spot, their knowledge of the suit has to be attributed at least prior to October 07, 2021, when the Partition Commissioner's report was submitted. The present appeal, however, has been filed inordinately long thereafter, only on September 12, 2024.
6. Even an application under Order IX Rule 13 of the Code of Civil Procedure was filed as per the averment of the appellants on March 13, 2023, that is, more than one and a half years after the submission of the Commissioner's report. Be that as it may, no explanation whatsoever has been given for the huge

delay from prior to October 07, 2021, when the appellants admittedly came to know of the suit, till September 12, 2024, when the present appeal was filed. Thus, even on the face of the application for condonation of delay, no ground whatsoever has been made out for condonation of the delay in preferring the appeal.

7. Accordingly, CAN 1 of 2024 is dismissed on contest.
8. Consequentially, FAT 290 of 2024 is dismissed as time-barred.
9. CAN 2 of 2024 also stands dismissed accordingly.
10. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)