

AD-07
Ct No.16
29.04.2025
TN

FAT 13 of 2024
IA No: CAN 1 of 2023
CAN 2 of 2023
CAN 3 of 2025

Sri Manik Lal Saha
Vs.
Smt. Anima Saha and others

Mr. Sandeep Prasad Shaw,
Mr. Arka Banerjee,
Mr. Aman Kr. Singh

....for the appellant

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Anirban Saha Roy,
Mr. Abhirup Haldar

....for the respondents

1. Affidavit-of-service filed today be kept on record.

Re: CAN 3 of 2025

2. CAN 3 of 2025 is an application for expunging the name of the respondent no.1, since deceased. It is submitted by learned counsel for the appellant that the heirs and legal representatives of the deceased respondent are already on record. As such, CAN 3 of 2025 is allowed, thereby expunging the name of the respondent no.1 from the appeal.
3. There will be no order as to costs.
4. The learned Advocate-on-record for the appellant shall, during the course of the day, carry out the necessary deletion of the name of the respondent no.1 accordingly in the other pending application(s) and the memorandum of appeal.

Re: CAN 1 of 2023

5. CAN 1 of 2023 is an application for condonation of delay in preferring the present appeal, which has been taken out against the final decree passed in a partition suit.
6. Learned counsel for the appellant submits that the appellant, for the first time, learnt about the filing of the suit on August 30, 2023 and thereafter, having enquired into the matter and applied for certified copies, upon coming to know about the suit, obtained the certified copies of the impugned judgment and final decree and at the earliest thereafter has preferred this appeal.
7. Learned counsel appearing for the appellant seeks to take the court through the annexures to the present application, thereby indicating that the appropriate provisions of Order V of the Code of Civil Procedure were not resorted to prior to taking up the suit for *ex parte* hearing and passing the impugned decree.
8. Learned counsel appearing for the surviving respondents submits that Section 97 of the Code of Civil Procedure prohibits a person from challenging the preliminary decree passed in a partition suit in the event such preliminary decree was not challenged prior to passing of the final decree. In the present case, no appeal has been preferred against the preliminary decree passed in the partition suit. The present appeal pertains to the final decree. It is

submitted that, as such, the appellant cannot take the court behind the preliminary decree and re-open the preliminary decree at this belated juncture. It is contended that by arguing that the defendant/appellant was never served with a copy of the summons, the preliminary decree itself is sought to be challenged by the appellant.

9. Learned counsel for the respondents also controverts the averments made in the application for condonation of delay on merits.
10. Even without going into the question as to whether the present appeal, in an indirect manner, seeks to challenge the preliminary decree, since it is well-settled that if no appeal has been preferred against the preliminary decree, in a challenge against the final decree, the preliminary decree cannot be re-opened, we are not convinced with the explanation given in the application for condonation of delay as to the cause of such delay being *bona fide* and sufficient.
11. In paragraph no.13 of the application, the appellant/petitioner contends that on August 30, 2023 the appellant/petitioner for the first time came to know from “his reliable source” that the plaintiffs/respondents have filed a suit for partition.
12. However, firstly, the nature of the “reliable source” has not been disclosed. Secondly, it is unexplained as to why such “reliable source” did not inform the

appellant about the suit earlier and waited till after the passing of the final decree.

13. Since it is alleged that even the factum of filing of the suit was informed only on August 30, 2023, that is, more than four years after passing of the final decree, there is no conceivable reason disclosed as to why the informant of the appellant could not intimate the appellant about such institution of the suit at an earlier juncture.
14. That apart, the span of the delay is considerable and we are not convinced from the meagre explanation furnished in the application as to why the appellant was not diligent enough to prefer the appeal earlier.
15. Taking into consideration the averments in the application as a whole, we find that sufficient explanation for the delay in preferring the appeal has not been made out.
16. Accordingly, CAN 1 of 2023 is dismissed on contest without, however, any order as to costs.

Re: FAT 13 of 2024
CAN 2 of 2023

17. Consequentially, FAT 13 of 2024 is dismissed as time-barred. CAN 2 of 2023 is, accordingly, also dismissed.
18. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)