

Form No. J(2)

In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side

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

**F.A.T 559 of 2019**  
**IA No: CAN 1 of 2024**  
**CAN 2 of 2024**

**In Re: Baneswar Dey**

For the appellant : Mr. Anjan Banerjee  
Mr. Muktokesh Das

Heard on : 28.10.2025

Judgment on : 28.10.2025

**Sabyasachi Bhattacharyya, J.:-**

1. The present appeal has been preferred against the dismissal of an uncontested probate case by the District Delegate at Kalna.
2. In the application for condonation of delay bearing CAN 1 of 2024, it has been indicated that the appellant, who runs a small business, which has been indicated at the time of hearing to be the business of selling vegetables, was unaware of the steps to be taken against the dismissal of the probate case.

3. Moreover, it has been indicated in the application that the appellant was not in a financial condition to prefer any challenge.
4. Although the reasons furnished in the condonation application are unhappily drafted, we can appreciate the agony of the litigant in not having proper legal advice, in the sense that even the uncontested probate case of the appellant was dismissed merely for non-production of attesting witnesses of the Will.
5. That apart, we cannot be unmindful of the fact that after all, in a probate proceeding, it is the last desire of a deceased person which is being sought to be honoured.
6. In the event, we shut out the litigant at the precincts of justice, ultimately the last wish of the deceased testator would go unfulfilled.
7. Moreover, also keeping in view the fact that a probate decree/judgment is in the nature of a judgment in *rem* and the laches of an individual litigant, be he the sole legatee/executor in the Will, ought not to come in the way of lending fruition to the express desire of a deceased testator.
8. However, in view of the dearth of quality in the explanation offered for the delay, some amount of costs ought to be imposed on the petitioner as a condition for allowing the condonation application.

- 9.** In such view of the matter, CAN 1 of 2024 is allowed, thereby condoning the delay in preferring FAT 559 of 2019, on condition that the appellant deposits costs of Rs.10,000/- with the Calcutta High Court Legal Aid Services Authority within one month from date.
- 10.** It is made clear that the event of non-deposit of such amount, the above order shall stand automatically vacated and the appeal will be deemed to stand dismissed as time-barred.
- 11.** CAN 2 of 2024 is an application for production of additional evidence.
- 12.** The appellant contends that the appellant has all along been ready with the two attesting witnesses of the Will-in-question and wants them to depose in the probate proceeding.
- 13.** Accordingly, we allow CAN 2 of 2024 and permit the appellant to have the two attesting witnesses of the Will adduce evidence in connection with the probate proceeding.
- 14.** In view of the above order, F.A.T 559 of 2019, which is even otherwise uncontested, is allowed, thereby setting aside the impugned judgment and order (deemed decree) dated December 4, 2017 passed by the learned District Delegate at Kalna, District-Purba Bardhaman in Probate Case No.24 of 2011 and remanding the matter to the District Delegate for a fresh adjudication on merits upon granting opportunity to the

appellant to adduce evidence of the attesting witnesses of the Will and producing any other witness and/or document, if the appellant so deems fit.

- 15.** There will be no order as to costs.
- 16.** Urgent photostat copy of this order, if applied for, be given to the appellant upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

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