

AD-31
Ct No.16
30.04.2025
TN

FMAT 453 of 2024
IA No: CAN 1 of 2024
CAN 2 of 2024

Smt. Supriya Chakraborty
Vs.
Jharna Singh, since deceased, substituted
by her legal heirs Tapan Singh and others

Mr. Dibashis Basu,
Mr. Sukanta Das,
Mr. Arun Bandyopadhyay

....for the appellant

1. IA No: CAN 1 of 2024 is an application for condonation of delay in preferring the appeal. Upon a perusal of the application, we find that the delay in preferring the appeal is 1223 days. The primary ground for the delay, as sought to be explained in the application, is that the appellant is a chronic patient of neurological problem, for which she cannot stand on her own and cannot travel. Learned counsel further submits that the appellant was dependent on her youngest daughter, who was her constituted attorney and was looking after the matter. It is submitted that there was a communication gap between the learned Advocate appearing on behalf of the appellant and the appellant and the matter was being looked after by the youngest daughter of the appellant/petitioner.
2. However, we find from the affidavit filed in support of the present application that the same has been

affirmed by the youngest daughter of the appellant/petitioner herself in the capacity of the constituted attorney of the appellant. Having done so, it cannot now be argued by the appellant that due to the communication gap between such constituted attorney and herself and/or the learned Advocate in the court below, the appeal could not be filed in time.

3. There is no explanation whatsoever as to why the constituted attorney/youngest daughter of the appellant, who has even now acted on behalf of the appellant in preferring the appeal and the connected applications, could not file the appeal in proper time.
4. That apart, we find that the appellant is a habitual defaulter, since the present appeal itself has been preferred against the dismissal of an application for condonation of delay in preferring an application under Order IX Rule 9 of the Code of Civil Procedure, which was filed after more than two years subsequent to expiry of the limitation period. Thus, the appellant, from the very inception of the *lis*, has not been diligent in conducting her probate case which led to the said probate case being dismissed for default.
5. Apart from the application for restoration of the probate case being filed after two years from the said dismissal, even before us, the appeal has been filed considerably late, without any plausible explanation for such delay.

6. Accordingly, we are of the opinion that the appellant as well as her constituted attorney were grossly negligent in preferring the appeal in time.
7. Hence, IA No: CAN 1 of 2024 is dismissed without any order as to costs.
8. Consequentially, FMAT 453 of 2024 is dismissed as time-barred. As a further consequence, CAN 2 of 2024 is also dismissed.
9. There will be no order as to costs.
10. It is made clear that since the appeal itself was preferred against the dismissal of an application for condonation of delay and consequential dismissal of an application under Order IX Rule 9 of the Code of Civil Procedure, there was no conclusive adjudication at any point of time regarding the nature of the document of which probate was sought, insofar as whether the same is a Will or a deed of settlement. Since learned counsel for the appellant submits that the appellant seeks to rely on the said document in a different partition suit pending between the appellant and other parties, we leave it open to the appellant to seek production of the document-in-question in the said suit, if the appellant is otherwise so entitled in law.
11. It is further clarified that neither this court nor the trial court has at any point of time conclusively adjudicated the nature and character of the

document-in-question insofar as whether the same is
a Will or a deed of settlement.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)