

09.06.2025

Court No.1

Item No.25

(PP)

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

**FAT 37 of 2024
with
CAN 1 of 2025**

**Dibakar Sarkar
versus
Rathindra Dev Roy**

Mr. Subham Ghosh,
Mr. Mayank Roy

....for the appellant.

This is an appeal by the tenant in an eviction suit challenging the decree of eviction passed against the said appellant. Initially, an appeal was preferred before the Court of the learned Additional District Judge, 1st Court at Siliguri. Subsequently, it was found by the appellant that the said court did not have the jurisdiction to hear an appeal arising out of a suit which was valued at Rs.2,34,650/-. The appellant, therefor, withdrew the appeal.

In the order dated 27th February, 2024 while allowing the appeal to be withdrawn no leave to file an appeal on the self-same ground was granted. The appellant did not seek recalling or review of the said order but has filed the appeal before this Court on 7th October, 2024 with an application for condonation of delay. In the application for condonation of delay,

though not directly but in effect the appellant has sought for the benefit under Section 14 of the Limitation Act, 1963.

In order to get the benefit of Section 14 of the Limitation Act, 1963, the appellant is required to satisfy the Court that the appellant was proceeding bona fide before a Court without jurisdiction. Assuming without admitting that the appellant is entitled to such benefit and the same is given to the appellant, then also the recording in the order dated 27th February, 2024 stands in the way to grant the same in view of the provisions under Order 23 Rule 1 of the Code of Civil Procedure, 1908 when leave was specifically refused allowing the appellant to prefer an appeal on the self-same ground. Even otherwise, the explanation given for the delay in preferring the appeal is from being satisfied. One should also not lose sight of the fact that a tenant in an eviction suit after suffering a decree often attempting to delay the execution of the decree which is a mala fide attempt and is in abuse of process of Court. We are, therefore, not inclined to condone the delay and permit the appellant to challenge a decree for eviction dated 16th March, 2023 to be challenged after more than two years.

In the aforesaid facts and circumstances, we do not find any merit in the application for condonation of delay, being CAN 1 of 2025. The said application is, therefor, dismissed. Since the delay is not condoned, the

appeal has not born in the eye of law, and as such, not entertained. We also refrain from dealing with the appeal on merits.

(Arindam Mukherjee, J.)

(Partha Sarathi Chatterjee, J.)