

OC-16

APOT/177/2025
IA-No.GA-COM/1/2025

IN THE HIGH COURT AT CALCUTTA
Commercial Appellate Division
Original Side

OPTIMUM INFRATEL PVT. LTD.

-VERSUS-

TORUS BUILDCOM PVT. LTD. & ORS.

BEFORE :
THE HON'BLE JUSTICE DEBANGSU BASAK
And
THE HON'BLE JUSTICE MD. SHABBAR RASHIDI
Date : 4th December, 2025.

Appearance:
Mr. Lokenath Chatterjee, Adv.
Ms. Mary Datta, Adv.
...for the appellant.

The Court :- IA No.GA-COM/1/2025 is an application seeking
condonation of delay.

Department reports a delay of 834 days in filing and preferring the
appeal.

Appeal is at the behest of the plaintiff in CS/113/2022 and directed
against a judgment and order dated March 20, 2023.

By the impugned judgment and order, learned Single Judge refused
to recall an order dated August 22, 2022 dismissing the suit.

Learned advocate appearing for the appellant draws the attention of
the Court to the averments made in paragraph 31 of the application for
condonation of delay in filing the present appeal. He submits that, there are

only two directors of the appellant. Both directors are suffering from medical condition and, therefore, the delay of 834 days was occasioned.

The application for condonation of delay, filed in the appeal, refers to alleged medical condition of the two directors of the appellant for condoning the delay in filing the appeal.

Department reports that the delay is of 834 days. The same is not disputed by the appellant.

Such delay is sought to be explained by the averments in paragraph 31 of the application for condonation of delay which, as noted above, speaks of medical condition of the two directors.

The medical condition of the two directors are not specified in the application. No documents are annexed to the application to sustain or substantiate such a claim of medical illness. The period of time when both the directors were suffering from such medical condition are not stated in the application.

It is preposterous that the appellant which is a company is running only on the basis of directors who are medically unfit for all this time. The appellant is a company which is still alive and, therefore, is conducting its business. Therefore, there are other persons apart from the directors who are looking after the affairs of the company. It is not the claim of the appellant that the apart from the two directors, there are no other persons who looks after the affairs of the company. More importantly, the time when the two directors of the appellant was suffering medical conditions are not specified.

We find from the impugned judgment and order that the appellant as the plaintiff, did not take any steps in the suit. The suit and the interlocutory application appeared before the learned Single Judge on July 18, 2022, July 25, 2022, July 28, 2022 and July 29, 2022 when the appellant, as a plaintiff, remained unrepresented. Ultimately, on August 22, 2022 learned Single Judge passed an order dismissing the suit and the interlocutory application on the ground that the appellant, as the plaintiff, was not diligent in proceeding with the suit or the interlocutory application.

By the impugned order learned Single Judge did not find merits in the application for recalling filed by the appellant. Learned Single Judge noted that, the suit was dismissed on August 22, 2022. Learned Single Judge also noted that the learned advocate for the appellant, as the plaintiff, was available in India on August 19, 2022 although claiming to left India on July 8, 2022. Learned Single Judge noted that, the learned advocate for the appellant rejoined offices on September 2, 2022 on the ground that such advocate was ill and was undergoing treatment.

Learned Single Judge noted that the appellant, as the plaintiff disappeared for the three months after filing the suit. The medical certificate relied on by the learned advocate for the appellant was not convincing and did not justify any reason for repeated non-appearance of the appellant as the plaintiff.

In view of the fact that, the delay in preferring the appeal not being adequately explained and taking into consideration of the conduct of the appeal

before the learned Single Judge, as noted in the impugned judgment and order, we are not minded to condone the delay in making and filing appeal.

IA No.GA-COM/1/2025 is dismissed.

With such dismissal, the Department will treat APOT/177/2025 is dismissed.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)

A/s.