

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

SAT 27 of 2026
with
CAN 1 of 2026

Kasba Sporting Club and Anr.
Vs.
Smt. Rekha Mondal and Ors.

For the appellants : Mr. Rajdeep Bhattacharjee,
Mr. Sauradeep Dutta,
Mr. Himadree Ghosh, Advs.

For the respondents : Mr. Debanik Banerjee,
Mr. Steven S. Biswas, Advs.

Heard on : March 2, 2026.

Judgment on : March 2, 2026.

Sabyasachi Bhattacharyya, J.:

1. The present second appeal has been preferred against the dismissal of a title appeal as time-barred, consequential upon dismissal of the connected application for condonation of the delay in filing such appeal.

2. Learned counsel for the appellants cites *N. Balakrishnan vs. M. Krishnamurthy* reported at (1998) 7 SCC 123 and *Ummer vs. Pottengal Subida and Ors.* reported at (2018) 15 SCC 127 for the proposition that a liberal view has to be taken in condonation of delay, even if there is some lapse on the part of the litigant.
3. Learned counsel submits that due to the different ailments of the senior counsel who was conducting the litigation on behalf of the appellants in the Trial Court, the appellants could not reach such counsel for a substantial period (two to three years) prior to the disposal of the suit.
4. Ultimately, the impugned judgment and decree of the Trial Court was passed on July 30, 2024 and the said senior counsel expired on December 29, 2024. Only thereafter, the appellants contacted a learned junior of the said counsel and learnt from an inspection of the records about the disposal of the suit behind the back of the appellants.
5. Although ordinarily, the respondents do not have a right of audience at the stage of hearing of an appeal under Order XLI Rule 11 of the Code of Civil Procedure, we take the aid of learned counsel for the respondents for the limited purpose of

taking on record the judgment cited before, and considered by, the first Appellate Court, being *Rajneesh Kumar and Anr. vs. Ved Prakash* reported at 2025 (1) ICC 628 (SC).

6. Upon a perusal of the impugned judgment, we do not find any substantial question of law involved.
7. The principle laid down in *N. Balakrishnan (supra)* is that a court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause and that there is no presumption that delay in approaching the court is always deliberate. While dwelling on “sufficient cause” under Section 5 of the Limitation Act, the Hon’ble Supreme Court observed that in every case of delay, there can be some lapse on the part of the litigant concerned but that alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of dilatory strategy, the court must show utmost consideration to the suitor.
8. Again, in *Ummer vs. Pottengal Subida and Ors.* reported at (2018) 15 SCC 127, also cited by the appellants, the Hon’ble Supreme Court, in the facts of the case, came to the finding that sufficient cause for the delay had been made out.

9. However, the facts of the said case were completely different from the present case. Whereas, in the case at hand, the appellant no. 1 is a club and the appellant no. 2 is one of its functionaries, the appellant in the reported judgment was an old man in his late sixties and it was also not in dispute that he suffered heart disease during the relevant period and later was down with dengue fever.
10. It was also not in dispute that the appellant therein had been hospitalized to get medical treatment for those two ailments for a long time during the relevant period and that he was mentally disturbed due to disputes going on in his family and was not able to attend his day-to-day duties due to his advanced years and prolonged ailments.
11. None of the said alleviating circumstances are available here.
12. Insofar as *Inder Singh vs. State of Madhya Pradesh* reported at 2025 SCC OnLine SC 600 is concerned, with utmost respect, we do not find any proposition, as such, being laid down in the said case. Although the Hon'ble Supreme Court considered several previous judgments of itself and other Courts, at the end, it was of the opinion that the second appeal in the said matter deserved to be heard and contested and

decided on merits. Hence, the said judgment also does not come to the aid of the appellants.

13. On the contrary, in *Rajneesh Kumar (supra)*, which was considered by the first appellate Court, the Hon'ble Supreme Court had taken into consideration previous judgments, where a proposition was laid down that the advocate is the agent of the party and his acts and statements, made within the limits of authority given to him, are the acts and statements of the principal, that is, the party who engages him. It was further observed that although in certain situations the Court may, in the interest of justice, set aside a dismissal order or an *ex parte* decree notwithstanding the negligence and/or misdemeanor of the advocate where it finds that such client was an innocent litigant, but there is no such absolute rule that a party can disown its advocate at any time and seek relief, since such an absolute rule would make the working of the system extremely difficult.
14. It was also taken into consideration that the necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence, documentary as well as oral, to enable

the defendant to contest the claim against him and secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them, when challenged or disputed, to remain dormant without asserting them in a court of law.

15. Although under normal circumstances, past conduct of a litigation is not required to be considered, however, the learned first appellate Judge was not entirely wrong in taking into consideration the fact that the learned advocate appearing for the appellants in the Trial Court met his demise only on December 29, 2024, whereas the suit had been decreed against the appellants five months previously, that is, on July 30, 2024.
16. That apart, no explanation is offered by the appellants regarding the long delay caused from December 29, 2024, when the Senior counsel passed away, till April 30, 2025, when the certified copies were even applied for.
17. Also, from the conduct of the appellants, it is evident that after having filed their written statement and initially having contested the suit, the appellants remained unrepresented on several occasions.

18. Despite the argument of the appellants that the suit was decreed *ex parte* against them, we find from the decretal portion of the Trial Court's judgment that the suit was decreed on contest against the defendants.
19. That apart, nothing prevented the appellants from taking a change if their counsel was in a debilitated condition, physical or mental, for several years prior to the culmination of the suit. Having not done so, nor having pleaded specifically any sufficient reason for not having regularly contacted their advocate or being vigilant in the conduct of the suit, the appellants cannot but be labelled as negligent litigants, who were adopting dilatory tactics, thus coming within the exceptions as laid down in *N. Balakrishnan (supra)*.
20. That apart, the aforesaid considerations fall within the domain of facts and do not pertain to any legal infraction.
21. Even otherwise, in view of the latest view taken by the Hon'ble Supreme Court in *Rajneesh Kumar (supra)*, the appellants are bound by their counsel's inaction and their own negligence in pursuing the *lis* diligently in the trial court, which shows dilatory tactics being adopted by the appellants. Thus, we find that no

substantial question of law is involved in the present second appeal.

22. Accordingly, SAT 27 of 2026 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

23. CAN 1 of 2026 is accordingly dismissed as well.

24. There will be no order as to costs.

25. Urgent Photostat copies of this order, if applied for, shall be furnished expeditiously to the parties, subject to compliance of requisite formalities.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)

AD-24
Ct No.16
02.03.2026
(SSS)