

25.03.2026
Court No. 12
Item No. 18
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 183 of 2026
IA No : CAN 1 of 2026

Sri Biswanath Maity
-Versus-

The State of West Bengal & Ors.

Mr. Prasanta Bishal
.....for the appellant
Mr. Sambuddha Dutta,
Mr. Samrat Paul
....for the State.

Re : **CAN 1 of 2026**

- 1) CAN 1 of 2026, is an application for condonation of delay of 18 days in filing the appeal.
- 2) We find from the report of the Stamp Reporter that the delay is of 17 days.
- 3) Upon considering the averments in Paragraphs 2, 3 and 4 of the said application, we are satisfied that the explanation for the delay in filing the appeal.
- 4) Accordingly, CAN 1 of 2026 is allowed.
- 5) The delay is condoned.
- 6) The appeal is regularized.

Re : **MAT 183 of 2026**

- 7) The appeal arises out of an order of the learned single Judge passed in W.P.A. 21485 of 2024.
- 8) His Lordship was pleased to reject the writ petition on the ground that when a civil suit is pending, the issue of unauthorized

construction should be raised before the civil Court. His Lordship was of the further view that the allegation was mainly violation of the order of injunction passed by the civil court and the remedy of the appellant was before the civil court. Whereas, the allegation of the appellant in the writ petition was non-consideration of the complaint of the appellant by the panchayat authorities when specific allegations of unauthorized construction over a plot of land, which was the subject matter of a partition suit and in respect of which there was an order of injunction, had been made.

9) His Lordship erred on two grounds. The cause of action in the civil suit was for partition of the property between the co-sharers. Allegation of violation of an injunction order was separate and distinct from the complaint of unauthorized construction. The remedy against such construction is available under the West Bengal Panchayat Act, 1973. Secondly, the issue relating to unauthorized construction is absolutely within the domain of the permission granting authority, that is, the gram panchayat and not a civil Court. The local authority is authorized under the statute to direct demolition of an unauthorized construction. Under such circumstances, the order impugned is set aside.

10) A comprehensive application will be filed by the appellant before the gram panchayat. It is submitted that the construction has now been completed. The pendency of the civil suit will not prevent the gram panchayat from deciding the matter in accordance with law. Before any decision is taken by the gram

panchayat, an inspection of the premises shall be conducted in the presence of all the parties. The inspection report shall be handed over to the parties. The parties shall be permitted to file written objection or response to the same. Thereafter, a hearing shall be conducted and a reasoned order shall be passed. If any unauthorized construction is detected, the matter shall be sent to the Sub-Divisional Officer for further steps in accordance with the provisions of Section 23 (5) and 23(6) of the West Bengal Panchayat Act, 1973. The suit will proceed on its own merits. We have not entered into the merits of the claim of the appellant and leave it open to the gram panchayat to decide the entire issue of unauthorized construction.

11) Accordingly, M.A.T. 183 of 2026 is disposed of.

12) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)