

30.06.2026
Item No.44
Court No.01
Avijit Mitra

**RVW 100 of 2025
with
IA No.CAN 1 of 2025
with
IA No.CAN 2 of 2025
in
FA 212 of 2016**

**M/s. Triveni Holdings Pvt. Ltd. & anr.
- Versus -
Sri Saurav Roy**

Mr. Ashoke Banerjee, Sr. Adv.,
Mr. Abhrajit Mitra, Sr. Adv.,
Mr. Sakya Sen, Sr. Adv.,
Mr. Anirban Das,
Ms. Pallavi Chatterjee
....for the applicants

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das,
Mr. Abul Mullick
....for the Respondent

Aggrieved by the judgment and decree dated 16th February, 2023 passed by this Court in the first appeal being FA 212 of 2016, the applicants herein being the defendants in the Title Suit no. 74 of 2011 have preferred the present review petition being RVW/100/2025. In connection with the same, an application for condonation of delay being IA No.CAN 1 of 2025 and an application for stay of all further proceedings in connection with the execution case no.12 of 2023 being IA No.CAN 2 of 2025 have been filed.

Mr. Mitra, learned Senior Advocate appearing for the applicants submits that condonation of delay is a discretionary power available to Courts. Exercise of discretion must necessarily depend upon sufficiency of cause shown and the degree of acceptability of explanation, length of delay being immaterial. When substantial justice and technical conditions are pitted against one another, the former would prevail.

He further submits that during pendency of the execution of case in the month of March, 2025, the learned advocate who was representing the applicants before the learned executing Court, pointed out certain grounds of review and advised them to prefer review. On the basis of such advice the appellants preferred the instant review petition in the month of March, 2025 itself and as such there had been no deliberate delay on the part of the applicants in approaching this Court.

Mr. Mitra argues that the Hon'ble Court delivered the impugned judgment being oblivious of the fact that the respondent had failed to establish that the loan granted to him stood liquidated. The plaintiff herself asked for and incorporated a prayer for rendering accounts since the principal amount together with interest was still due. On one hand the plaintiff had claimed accounts towards dues and on

the other hand had prayed for recovery of possession and such plea was mutually destructive.

He further argues the judgment dated 16th February, 2023 suffers from error apparent on the face of the record since by virtue of payment of rent, a tenancy under the West Bengal Premises Tenancy Act was created and such question of law was not decided by the Hon'ble Court.

Mr. Mukherjee, learned advocate appearing for the plaintiff/respondent no.1 at the inception urges a point of maintainability of the review petition since the judgment delivered in FA 212/2016 stood merged with the order of the Hon'ble Supreme Court dated 8th December, 2023 passed in the Special Leave Petition (in short, SLP). By the said order the Hon'ble Supreme Court exercised its appellate jurisdiction and modified the judgment impugned in the SLP.

He contends that no Court can condone a delay in filing an application if the substantive application itself is not maintainable under the law. If the main action is dismissed due to non-maintainability, the delay condonation application becomes infructuous.

He further argues that there is no patent error apparent on the face of the records and matters

which ought to have been urged in course appeal have been sought to be agitated afresh.

In reply, Mr. Mitra, argues that indisputably no special leave was granted by the Hon'ble Supreme Court and in view thereof, it cannot be construed that the judgment of this Court had merged with the order of the Hon'ble Supreme Court by which the SLP was dismissed. In support of such argument reliance has been placed upon the judgments delivered in the cases of *Kunhayammed & ors. Vs. State of Kerala & anr.* reported in (2000) 6 SCC 359 and *Khoday Distilleries Limited & ors. Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal* reported in (2019) 4 SCC 376.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Records would reveal that the first appeal was preferred by the plaintiff challenging the judgment and decree dated 15th June, 2016 passed by the learned Civil Judge, Senior Division, 2nd Court, Barasat at North 24 Parganas in Title Suit no.74 of 2011. Upon contested hearing, the said appeal was disposed of by a judgment dated 16th February, 2023 setting aside the judgment impugned and directing the applicants to hand over possession of suit

property within a period two months. Challenging the same, the applicants preferred the SLP in which an order was passed on 8th December, 2023. The said order runs as follows:

‘Delay in filing and re-filing is condoned.

Having heard the learned counsel for the petitioners, we are not inclined to interfere. However, the petitioners are granted six months time from today to vacate and handover vacant possession of the premises in question subject to filing the usual undertaking within three weeks from today before the Registry of this Court.

Hence, Petition(s) stands dismissed.

Pending application(s), if any, shall stand disposed of.

The applicants, however, neither did submit any usual undertaking within the specified period nor did not vacate and handover vacant possession of the premises in question, as directed. The said period of six months granted to vacate the premises expired in the month of June, 2023. The review petition was filed about 1½ years thereafter on 25th March, 2025. No explanation whatsoever had been furnished by the applicant towards such delay in preferring the review petition.

The directions contained in the judgment dated 16th February, 2023 were that the respondents shall hand over possession of the premises in question to the appellant within two months failing which the

plaintiff would be at liberty to take steps for execution of the decree. The order passed in SLP would reveal that the said period of two months granted by this Court to the applicants was modified and six months time was granted to the applicants to vacate and hand over possession of the premises in question. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not in the latter.

The order dated 8th December, 2023 needs to be read as a whole and a particular line cannot be highlighted. The perusal of the same would reveal that the Hon'ble Supreme Court exercised its appellate jurisdiction since the judgment impugned was modified. In view thereof, the judgment dated 16th February, 2023 has merged with the order of the Hon'ble Supreme Court dated 8th December, 2023 and as such the review petition itself is not maintainable.

It appears that such delay in filing the review petition was caused only with the intent to elongate

the proceedings and to avoid the directions of the Hon'ble Supreme Court in a circuitous manner. Such conduct is not proper and reveals the intent of the applicants to frustrate the directions of the Court.

Condonation of delay is purely a discretionary remedy to save a meritorious case that would otherwise be time-barred. Question of exercise of such discretion does not arise since the substantive application itself is not maintainable under the law. Condonation of delay under Section 5 of the Limitation Act cannot breathe life into a fundamentally invalid or legally impermissible proceedings moreso when there is no allegation that the plaintiff had suppressed material facts or committed fraud on the Court.

For the reasons discussed above, the application for condonation of delay and the review petition together with the application for stay are dismissed with costs of Rs.50,000/- to be paid by the applicants to the respondent herein within a week from date.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, A.C.J.)