

D/L.3.  
June 23, 2026.  
MNS.

FMAT No. 117 of 2026  
+  
CAN 1 of 2026  
+  
CAN 2 of 2026

Smt. Jayanti Maity  
Vs.  
Shrishendu Krishna Maity

Mr. Prantick Ghosh,  
Mr. Siddhartha Sarkar,  
Mr. Prasad Bhattacharya,  
Ms. Poulami Saha,  
Mr. Sourav Gupta, Advs.

... for the appellant.

Mr. Nilanjan Bhattacharjee, Sr. Adv.,  
Mr. Soumyajit Das Mahapatra, Adv.

...for the respondent.

Re: CAN 1 of 2026 (condonation of delay)

1. The affidavit-of-service filed in Court today be kept on record.
2. The present condonation application has been filed with the allegation that initially the appellant had approached a person by the name of Rahul Das, who represented himself to be an Advocate of this Court. The particulars, including the mobile phone numbers, of the said person have also been disclosed in the application.
3. The said Rahul Das, according to the appellant, took the necessary papers, including certified copy, from the appellant to prefer an appeal. However, despite the

appellant having contacted him several times, verbal assurances continued but no appeal was preferred.

4. Ultimately, when the appellant approached Bar Association Room No. 13 of this Court, where purportedly the said Rahul Das used to sit, the appellant found from the learned Advocates sitting there that no such Advocate was known to them or attached to the said Bar Association.
5. Being misled by such false posturing of the said Rahul Das, the appellant allegedly approached her learned Advocate in the trial Court and found that the said learned Advocate had misplaced the documents pertaining to the matter. Subsequently, some of the documents were recovered and fresh certified copies of the impugned judgment and decree had to be applied for.
6. Learned counsel for the respondent vehemently opposes the prayer for condonation of delay and submits that the appeal has been preferred against the dismissal of an application for restoration of a divorce suit.
7. In view of the long delay of 535 days in preferring the appeal, the respondent, it is submitted, has remarried in the meantime. The considerations of equity demand that the condonation application be dismissed, since the subsequent validly contracted marriage of the respondent might otherwise be jeopardized.

8. In support of the said contention, learned counsel for the respondent cites a co-ordinate Bench judgment in the matter of *Sathi Ghosh Bhunya Vs. Rishi Arotrik Bhunya*, reported at 2025 SCC OnLine Cal 3944, where the remarriage of the respondent was taken into consideration while deciding the fate of an application under Order IX Rule 13 of the Code of Civil Procedure, read with Section 5 of the Limitation Act, 1963.
9. It is further submitted that the averments made in the condonation application have not been independently verified. It is also pointed out that if the appellant faced such a predicament, nothing prevented the appellant from lodging a formal complaint before the appropriate authorities which, in the present case, has not been done by the appellant, thus insinuating that the averments made in the condonation application are incorrect.
10. Upon considering carefully the submissions of the parties, we find that in *Sathi Ghosh Bhunya(supra)*, the consideration of remarriage of the respondent was only one of the ancillary considerations.
11. The Division Bench, in the said judgment, observed on merits that the appellant had not taken out any application for examination of the signature in the *Vakalatnama* filed on her behalf in the matrimonial suit in the context of the allegation she had never handed over such *Vakalatnama*. Also, it was observed that there was absence of any proof on the part of the

appellants to dispute her appearance in the divorce suit.

12. Such circumstances are absent in the present case.

13. Insofar as the averments made in the condonation application are concerned, we find that the grounds of delay are credible, particularly since the particulars and details of the said Rahul Das, against whom the brunt of the allegations have been levelled, have been disclosed in detail.

14. Thus, we do not find any fault or negligence evident on the part of the appellant in occasioning the delay in preferring the appeal.

15. The consideration of remarriage of the respondent in the meantime, thus, cannot come in the way of the condonation of the delay in preferring the appeal.

16. Accordingly, CAN 1 of 2026 is allowed on contest, thereby condoning the delay in preferring FMAT No. 117 of 2026.

17. There will be no order as to costs.

Re: FMAT No. 117 of 2026.

18. The appeal is now taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

19. The present appeal has been preferred against an order whereby the application filed by the appellant-wife under Order IX Rule 13 of the Code of Civil Procedure (for short, "the Code"), for restoration of a

divorce suit filed by the respondent-husband, was dismissed.

20. Learned counsel for the appellant argues that the appellant had only initially started practice as an Advocate but subsequently joined a different service and as such, at the relevant juncture, was not a practising Advocate of the Court where the suit was filed.

21. It is contended that the appellant was dependent on the assurances given by her father-in-law, that is, the father of the respondent-husband that he, as the head of the family, would look after the suit and resolve the issues, even after summons of the suit were served on the appellant.

22. During arguments, learned counsel for the appellant/wife stresses on the perceived mores of present Indian Society and contends that propriety in societal relationship and familial culture demand respect for elders. As such, the appellant placed full-fledged reliance on her father-in-law and was dependent on him to have the issues resolved with her husband. However, subsequently, upon coming to know that the suit had been decreed *ex parte* against her, the appellant had also initiated certain proceedings against her father-in-law under the Protection of Women from Domestic Violence Act, 2005.

23. Moreover, it is submitted that the suit proceeded in hot haste during the Pandemic period, when there were severe restrictions imposed on movements.

24. As such, taking into consideration such mitigating factors, it is argued that the learned trial Judge ought to have allowed the application under Order IX Rule 13 of the Code.

25. Upon hearing learned counsel for the appellant, we find reference in the impugned order, as also stressed upon by learned counsel for the respondent during hearing of the condonation application in connection with the present appeal, that the appellant has remarried after waiting for the statutory period of limitation for preferring an appeal, post-decree.

26. From a comprehensive perusal of the impugned judgment as well as carefully considering the submissions of the appellant, we do not find the pretext for absence of the appellant when the suit was decreed *ex parte* to be credible.

27. It is not possible to believe that the appellant, who is an educated lady and even started practice as an Advocate in the local Court under a renowned senior, which are all borne out by her own evidence before the trial court, was so naïve and bound by “family traditions” so as to rely on the father of the respondent-husband, the very person who had filed the suit for divorce against her, for contesting such suit.

28. In the social background to which the appellant belongs, as portrayed from her evidence in the trial court and discussed above, nobody can be gullible enough to accept her submission that she bowed down her head to her father-in-law in respect for elders even for the purpose of contesting the suit instituted by none else than his own son.

29. That apart, we do not find any credible reason having been made out as to why the appellant, who had started practice as an Advocate and had legal training, abstaining from contesting the suit. Moreover, she filed her application under Order IX Rule 13 of the Code also within the period when the Pandemic restrictions were still prevailing. The filing of such an application within the Pandemic restrictions period belies the aspect of prevalence of the Pandemic restrictions being a deterrent to the appellant contesting the suit itself.

30. Also, we cannot lose sight of the fact that the respondent, after waiting for the appeal period, albeit with knowledge of the restoration application, has remarried in the meantime.

31. Since, at the end of the day, the relief under Order IX Rule 13 is also an equitable relief, we have to balance the equities between the parties. In the event the appeal is admitted at this stage, the fate of not only the present parties but also a third party, that is, the present wife of the respondent, would be adversely affected due to no fault of her own.

32. Even otherwise, we are not satisfied that sufficient reasons were furnished by the appellant in the trial court for having the suit restored and/or the *ex parte* divorce decree set aside.

33. We cannot also forget that the appellate court is not supposed to substitute its own views for that of the trial court merely because it is possible in the facts of the case but can only interfere where there is a clear error of fact or law evident from the impugned order.

34. We do not find any such error in the present case, sufficient to interfere.

35. Accordingly, FMAT No. 117 of 2026 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

36. Consequentially, CAN 2 of 2026 is also dismissed.

37. There will be no order as to costs.

(Supratim Bhattacharya, J.) (Sabyasachi Bhattacharyya, J.)