

AD-04
Ct No.16
28.01.2026
TN

FAT 86 of 2023
IA No: CAN 1 of 2023
CAN 2 of 2023
CAN 3 of 2023

Pradip Kumar Kundu
Vs.
Smt. Radha Rani Kundu and others

Mr. Indranath Mukherjee,
Mr. Prosenjit Saha

.....for the appellant

Mr. Swarnendu Ghosh, Sr. Adv.,
Mr. Debdut Mukherjee,
Mr. Uttam Kr. Bhattacharyya

....for the respondent nos. 1 & 2

Mr. Soumanjan Bhattacharya

....for the respondent nos. 4 & 5

Re: CAN 2 of 2023

1. The present application, bearing CAN 2 of 2023, has been filed for condonation of the delay of more than three years in preferring the present appeal.
2. From the averments made in the application for condonation of delay, we find that the impugned decree, which was a contested decree, was passed in favour of the respondents on August 31, 2019.
3. Thereafter, an application for review was filed by the present respondents in respect of the said decree, bearing Miscellaneous Case No. 1957 of 2019, in which the present appellant admittedly appeared

through his erstwhile Advocate, who subsequently met his demise.

4. In the application for condonation of delay, the appellant pleads that his erstwhile learned Advocate did not advice him to prefer an appeal against the impugned decree. Thereafter, allegedly, upon the demise of the said erstwhile learned Advocate, the current Advocate of the appellant was engaged, who entered appearance on behalf of the appellant in the review application on November 11, 2022. However, it has been suggested that only upon having a conference with a senior Advocate of this Court did the said learned Advocate come to know about the necessity to prefer an appeal against the impugned decree and accordingly only on March 16, 2023, an application was made for the certified copies of the judgment and decree impugned in the present appeal.
5. Learned counsel for the appellant, during arguments, seeks to cast the blame on the current Advocate of the appellant as well, inasmuch as purportedly, the said learned Advocate did not have the minimum legal acumen to understand, immediately upon entering appearance in a review application from the decree passed against his client, that an appeal had to be filed against the same.
6. Learned counsel appearing for the respondent nos. 1 and 2 vehemently opposes the application by placing

reliance on the affidavit-in-opposition filed today in Court (along with the affidavit-in-reply of the appellant).

7. Learned counsel for the respondent nos. 1 and 2 places reliance on the averments made in the affidavit-in-opposition, in particular a list of dates, to indicate that even apart from the present suit, from which the appeal arises, the appellant appeared during the relevant period in the interregnum in several other suits filed by the other co-sharers in respect of the shares which are in dispute in the suit.
8. Learned counsel submits that the ignorance pleaded in the condonation application is not credible. It is further highlighted that consistently during the years 2020, 2021 and 2022, the present appellant was active in courts regarding the several other suits and, as such, could not be said not to have any minimum knowledge of the necessity to prefer an appeal against the decree passed against him.
9. On a perusal of the condonation application, we find that the plinth of the grounds sought to be made out therein is aspersions cast on the learned Advocates appearing for the appellant at different stages of the matter. We are aghast to see that only after the demise of the erstwhile Advocate of the appellant, serious allegations has been levelled against the said learned Advocate, although the said learned Advocate

was gracious enough to appear for the appellant in the review application filed by the respondents.

10. Not stopping there, during arguments, allegations have also been levelled against the present Advocate-on-record for the appellant regarding his purported ignorance of the necessity to file an appeal against a decree passed against his client, which is a rudimentary knowledge attributable to any learned Advocate, even from the first day of his or her practice. Upon query of Court, we are apprised that the current Advocate-on-record for the appellant is practising for about ten years and, thus, is not a newcomer to the profession in any event. As such, we are of the opinion that the blame sought to be cast on him is moonshine and a flimsy pretext.
11. That apart, we find from the affidavit portion of the condonation application that the appellant is in the occupation of business and has signed his name in English in the affidavit supporting the condonation application. From the cause title thereof, it is evident that the appellant is a resident of Kolkata and not a rural person. That apart, from the pleadings before us in connection with the condonation application, it is also evident that the appellant has been litigating in several courts regarding the shares concerned.

12. Thus, the appellant is not a naïve or a rustic person of lore, so as to entitle him to the benefit of lenience in a condonation application.
13. Not only the appellant appeared in the suit from which the present appeal arises and contested the same, he also appeared in the review application filed in connection therewith by the respondents through an Advocate at the relevant points of time.
14. Thus, all along, the appellant was fully aware of the impugned decree dated August 31, 2019 contemporaneously with the decree. Hence, we do not find the averments made in the condonation application to be credible; rather, those are a mere effort to mislead the Court into believing the appellant's naivety.
15. In such view of the matter, the conduct of the appellant is not *bona fide* but rather borders on *mala fides*.
16. That apart, absolutely no credible ground has been made out in the condonation application for condonation of the delay.
17. It is well-settled that the quality of the explanation given and the conduct of the appellant are germane for adjudicating a condonation application, and not the span of the delay. However, even such proposition has been diluted in recent times by the jurisprudence available in recent judgments of the Apex Court, to the

effect that if the span of delay is inordinately long, the same also has to be factored in while deciding a condonation application.

18. The span of delay in the present case is more than three years and even on the conduct of the appellant, we are satisfied that the same is not at all *bona fide*.
19. In such view of the matter, CAN 2 of 2023 is dismissed on contest without any order as to costs.

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20. Consequentially, FAT 86 of 2023 is dismissed as time-barred.
21. The other pending applications in connection with the said appeal, bearing CAN 1 of 2023 and CAN 3 of 2023, are also disposed of accordingly.
22. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)