

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

FAT 259 of 2025
with
CAN 1 of 2025
with
CAN 2 of 2025

Smt. Priyam Malik nee Jatua
Vs.
Sri Biplab Malik

For the appellant : Mr. Sounak Bhattacharya,
Mr. Anirban Saha Ray,
Mr. Sounak Mandal,
Mr. Abhirup Halder, Advs.

For the respondent : Ms. Ashrulina Amiya Gayen, Adv.

Heard on : February 04, 2026.

Judgment on : February 04, 2026.

Sabyasachi Bhattacharyya, J.:

1. By our previous order, we had directed the application for condonation of delay in preferring the appeal to be listed along with the appeal itself for hearing, in view of some of the issues involved in both being identical. However, there are certain

disparate issues as well, which we will discuss as we go forward.

2. An *ex parte* divorce decree under the Special Marriage Act was passed against the appellant-wife on October 16, 2023 in favour of the respondent/husband.
3. The present appeal against the same, however, was filed on May 23, 2025.
4. The appellant's case in the condonation application is that she came to know of the divorce decree only in the month of October, 2024. However, since she was at an advanced stage of pregnancy at that point of time and had been advised bed rest, the appellant could not take any steps for preferring an appeal against the said decree.
5. Ultimately, the appellant gave birth to a son on March 14, 2025. Only thereafter, in the month of May, 2025, after recovering somewhat, the appellant could take appropriate steps for preferring the appeal.
6. Learned counsel for the appellant submits that the period between the appellant first coming to know of the *ex parte* decree and the date of passing of the decree is easily explained by dint of the fact that the appellant could not have

had any knowledge of the suit or the *ex parte* decree at the relevant period.

7. In support of such contention, learned counsel places reliance on certain orders passed in connection with the suit, on the basis of the certified copy of the order sheet annexed to the memorandum of appeal itself.
8. For example, vide order no. 5 dated September 19, 2023, it was recorded by the learned Trial Judge that one A/D (acknowledgment due card) was received along with sealed envelope with a postal remark “unclaimed”, on the basis of which the learned Trial Judge proceeded to record that the present appellant (defendant in the suit) had refused to sign the service return. In the self-same order, the learned Trial Judge also relied on a report filed by the Process Server.
9. The said report of the Process Server is also placed before us.
10. From the same, it transpires that the summons of the suit was allegedly served on the defendant/appellant June 28, 2023 in the presence of certain neighbours of the appellant. However, learned counsel points out that the addresses of the

witnesses, depicted in the said report, do not tally with that of the appellant, as mentioned in the plaint.

11. That apart, from the Process Server's report it is clear that a lady wearing a mask had been passed off as the appellant, which itself, it is submitted, creates suspicion regarding proper service.
12. Learned counsel places reliance on the endorsements on the passport of the appellant, from which it appears that the appellant was out of India on the date when the summons was allegedly served.
13. From the endorsements in the passport, extracts of which are annexed to the condonation application, it appears that the appellant had departed from India on October 28, 2022 and thereafter, returned to India on September 19, 2023. Thus, the allegations that the summons was served in the interregnum and that the appellant had personally refused to receive the same, as sought to be made out in the bailiff's report, was patently incorrect.
14. Secondly, it is argued that the only address of the appellant given in the plaint is that of the alleged adulterer, with whom

the appellant allegedly had an adulterous relationship in terms of the plaint.

15. However, from several documents, including the passport, Aadhar Card, Ration Card and Voter's Identity Card of the appellant, copies of which are annexed to the condonation application, it is evident that the address shown therein of the appellant is her paternal address.
16. Thus, it is submitted that the summons was allegedly served at an address where the appellant has never resided.
17. That apart, learned counsel places reliance on Order V, Rules 17 and 19 of the Code of Civil Procedure (as amended by the Calcutta High Court Rules), in terms of which, in the event the summons cannot be served on a particular person, the same has to be affixed at a conspicuous place in the immediate vicinity of the address and a copy thereof has to be returned to the Court, upon which the Court is mandated to examine the Process Server.
18. None of such paraphernalia were complied with by the learned Trial Judge, as is apparent from the order sheet of the suit.
19. It is next contended by learned counsel for the appellant that under Rule 10 of the Special Marriage (Calcutta High Court)

Rules, 1955, in every petition for divorce on the ground of adultery, the alleged adulterer shall be impleaded as a co-respondent. The power to frame such Rules stems from Section 41(2)(a) of the Special Marriage Act, which specifically stipulates such requirement in the statute itself.

20. From the plaint of the present suit, it is pointed out that there was no impleadment of the alleged adulterer at all, thus vitiating the suit.

21. As such, since the suit itself was not maintainable, it is argued that the decree passed therein was bad in law.

22. Learned counsel appearing for the respondent/husband submits that as per the admission of the appellant herself in her condonation application, the father of the appellant had derived knowledge of the *ex parte* decree dated October 16, 2023 on September 20, 2024. Thus, the contention in a subsequent paragraph of the condonation application that knowledge was derived first in the month of October, 2024 is erroneous.

23. That apart, a gross discrepancy in the stands taken by the appellant is sought to be brought to the notice of the Court. Learned counsel for the respondent points out that whereas

the appellant has pleaded and annexed a purported medical certificate to indicate that she was advised bed rest in the month of August, 2024 due to her advanced stage of pregnancy, she flew out to Dubai on September 14, 2024, about a month thereafter, and returned on September 23, 2024. Thus, it is argued that the plea of advanced pregnancy as a defence against the appellant's negligence falls flat.

24. If the appellant could fly to Dubai a month after having been advised bed rest on the ground of advanced stage of pregnancy, there was no reason why she could not prefer the appeal for almost one year thereafter.
25. Learned counsel for the respondent submits that the arguments made on the maintainability of the suit and alleged non-service of summons pertain to the merits of the appeal and as such, it would be premature for this Court to consider those at this juncture, while considering the condonation application.
26. Learned counsel for the respondent cites the judgment of *Pathapati Subba Reddy (Died) by L.Rs. & Ors. vs. The Special Deputy Collector (LA)* reported at 2024 INSC 286 where the Hon'ble Supreme Court had considered several previous

judgments in the field and had come to the conclusion that whereas Section 5 of the Limitation Act has to be construed liberally and, in order to advance substantial justice, a justice-oriented approach should be taken, but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act. The Hon'ble Supreme Court held that Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised, even if sufficient cause is established, for various factors such as inordinate delay, negligence and want of due diligence.

27. Learned counsel further points out that the Hon'ble Supreme Court observed that delay condonation applications have to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that rigorous conditions have been imposed tantamount to disregarding the statutory provision.
28. In support of the same proposition, learned counsel also cites *Balwant Singh (Dead) vs. Jagdish Singh & Ors.* reported at (2010) 8 SCC 685, where the Hon'ble Supreme Court had

observed *inter alia* that delay cannot be condoned if the same is directly a result of negligence, default or inaction of a party.

29. Thus, it is submitted that the appellant's application for condonation of delay ought to be dismissed at the threshold.
30. Before going into the question as to whether the suit is maintainable, which can only be looked into in the event the appellant crosses the threshold hurdle of delay, we are to focus first on whether the appellant could sufficiently explain the delay occasioned between the appellant allegedly coming to know first of the *ex parte* decree as per her own pleadings and the filing of the appeal.
31. As mentioned earlier, admittedly the *ex parte* decree was passed on October 16, 2023 and the appellant's father, who was looking after the case for her and enquired with the advocate concerned, first learnt of the same on September 20, 2024.
32. Therefore, when the appellant returned from Dubai, which is her own case, on September 23, 2024, she must have been posted with the fact of such *ex parte* decree.
33. However, no plausible explanation, apart from the advanced stage of pregnancy of the appellant, has been put forth to

explain the long delay between September 23, 2024, when the appellant returned from Dubai, and May 23, 2025, when the appeal was filed.

34. With regard to the alleged advice of bed-rest due to advanced stage of pregnancy, we also find it difficult to accept such cause of delay.
35. From the purported medical certificate (it is to be noted that the same is not countersigned by the appellant herself as per the law), issued in the month of August, 2024, it transpires that the appellant was advised bed rest apparently due to the detection of a second pregnancy.
36. However, by flying to Dubai about a month thereafter on September 14, 2024, the appellant threw the said ground right out the window. The ground of advised bed rest is demolished by the appellant's own admitted conduct of having flown to Dubai on September 14, 2024, after having been advised such bed rest in August, 2024. Obviously, the appellant was not in such a condition on September 14, 2024 that she would still have to adhere to the purported advice of bed rest given one month back.

37. Thus, it is not possible for us to believe the contention of the appellant that due to her advised bed rest due to advanced pregnancy, she could not prefer the appeal in time.
38. Moreover, the appellant returned from Dubai on September 23, 2024. As per the pleading in the condonation application, the appellant was in an advanced stage of pregnancy and had to take bed rest from the month of October, 2024. However, in view of the above observations, there is no subsequent medical certificate post-return from Dubai to support such contention.
39. That apart, the son of the appellant was born only on March 14, 2025, that is, about six months after her return from Dubai.
40. Thus, we cannot also accept the contention of the appellant that she was in such an advanced stage of pregnancy that she could fly to Dubai but could not contact an advocate next door. If the birth of the child took place six months after the appellant's return from abroad, the term 'advanced stage' cannot be applied to the pregnancy.
41. In such view of the matter, we find that the appellant was grossly negligent and inactive insofar the preference of the appeal is concerned, at least from September 23, 2024, when

she returned from Dubai and already had knowledge of the *ex parte* decree, till May 23, 2025m when the appeal was actually filed. In the absence of any such explanation for the said delay, the rigours as set out in the cited judgments squarely apply.

42. Although in *Pathapati Subba Reddy (supra)*, a line of distinction was drawn between Section 3 and Section 5 of the Limitation Act, the latter being held to be construed more liberally, still, the Hon'ble Supreme Court categorically observed that the discretionary relief may not be exercised even if sufficient cause is established, if there is inordinate delay, negligence and want of due diligence, the last two of which are clearly found in the present case.
43. That apart, it was also cautioned by the Hon'ble Supreme Court in the said judgment that merits of the case are not required to be considered in condoning the delay. Although such proposition is somewhat contrary to the earlier judicial view taken in several judgments of the Hon'ble Apex Court, in view of the subsequent modified view as expressed in *Pathapati Subba Reddy*, we are bound by the said principle and cannot look behind the period of delay to look at the merits

of the service of summons or the other irregularities in the suit pointed out by the appellant.

44. In the matter of *Balwant Singh (Dead) (supra)*, the Hon'ble Supreme Court had also observed that once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of the party. It was also observed that liberal construction cannot be equated with doing injustice to the other party.
45. Furthermore, in the aforesaid judgments, the Hon'ble Supreme Court also issued a caution against allowing condonation applications on sympathetic grounds alone, unless the delay is sufficiently and convincingly explained.
46. Thus, following the above propositions, we are of the opinion that the appellant has miserably failed to show her bona fides in order to explain away her gross negligence during the relevant period between September 23, 2024 and May 23, 2025, when the appeal was preferred.

47. In such view of the matter, CAN 1 of 2025 is dismissed on contest without any order as to costs. Accordingly, FAT 259 of 2025 is dismissed as time-barred. CAN 2 of 2025 stands disposed of consequentially.

48. There will be no order as to costs.

49. The parties shall act on the server copy of this order, duly downloaded from the official website of this Court.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)

AD-3
Ct No.16
04.02.2026
(SSS)