

AD – 9
Ct No.16
29.06.2026
(SSS)

FMAT 234 of 2025
with
CAN 1 of 2025
with
CAN 2 of 2025

Smt. Subhra Batabyal and Anr.
Vs.
Sri Sanjoy Batabyal and Anr.

Md. Younush Mondal
.....For the appellants.

Mr. Bhabani Prasad Mondal,
Mr. Sukanta Mondal
.....For the respondents.

1. Supplementary affidavit filed today be kept on record.
2. Heard learned counsel for the parties.
3. It transpires that initially the appeal could not be preferred in time because the certified copy of the impugned order was handed over late to the appellants.
4. Thereafter, the matter travelled between advocates and since the appellants did not have the complete papers at one juncture, some time was consumed in preferring the appeal.
5. Upon consideration of the aforementioned circumstances, we are satisfied that sufficient

reason for the delay in preferring the appeal has been made out.

6. Accordingly, CAN 1 of 2025 is allowed on contest, thereby condoning the delay in preferring FMAT 234 of 2025.

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

8. The present appeal has been preferred against an order whereby the learned First Appellate Court dismissed an application for restoration of the appellants' title appeal, filed under Order XLI Rule 19, read with Section 151, of the Code of Civil Procedure.

9. In the said application, the appellants sought to make out a case that the original appellant no. 3 in the First Appellate Court, who was conducting the matter on behalf of all the appellants, died on April 21, 2020. Thereafter, the present appellants contacted the sons of the deceased appellant no. 3 on September 19, 2022. Subsequently, the Puja Vacation intervened and due to alleged serious illness of the appellant no. 2 between October 29 and November 11, 2020, the conducting advocate could not be contacted. Thereafter, the appeal was drafted and filed.

10. The learned First Appellate Court, by the impugned order, disbelieved the case made out in the said application as not credible.

11. The learned First Appellate Court, *inter alia*, observed that the appellants also cited the brief of the advocate having been lost in the year 2020 due to a cyclone, which, it was found, had no relevance to the matter since the appeal was dismissed for default on July 16, 2022.

12. Also, we find from the application for restoration itself that no explanation whatsoever has been furnished as to why the appellant nos. 1 and 2, who were not the heirs of the deceased appellant no. 3 but the first two appellants themselves, did not take any steps even after the conducting appellant no. 3 met his demise on April 21, 2020. The next averment in the restoration application after the said date jumps to September 19, 2022, when the present appellants contacted the sons of the deceased appellant no. 3. The explanation for the two and a half years in-between is conspicuous by its absence.

13. Even thereafter, the purported reasons for the delay, including the illness of appellant no. 2, have not been substantiated by any material document.

14. It is well-settled that although the span of the delay by itself may not be germane, the quality and sufficiency of the cause for the delay is material in deciding applications for restoration and condonation of delay.

15. In the circumstances of the present case, we do not find any fault with the impugned order, whereby the restoration application and the connected condonation application were dismissed.

16. Hence, FMAT 234 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

17. Consequentially, CAN 2 of 2025 stands dismissed as well.

18. No order as to costs.

19. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)