

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

FAT 176 of 2024
IA No: CAN 1 of 2024
CAN 2 of 2024

The Government of West Bengal and another
Vs.
M/s D. Das & Brothers

For the appellants : Mr. Dipanjan Dutta,
Mr. Debangshu Dinda,
Mr. Soumen Chatterjee
For the respondent : Mr. Probal Kumar Mukherjee, Sr. Adv.,
Ms. Hashnuhana Chakraborty,
Mr. Vinay Kumar Purohit
Heard on : 03.02.2026
Judgment on : 03.02.2026

Sabyasachi Bhattacharyya, J.:-

Re: CAN 1 of 2024

1. Affidavit-of-service filed today be kept on record.
2. Heard learned counsel for the parties.
3. We find from the explanation given in the condonation application that the same is somewhat unhappy inasmuch as the specific details of the reasons for the delay have not been mentioned.

4. However, on an overall consideration of the averments made in the application, we find the usual red-tapism afflicting public authorities to be the primary result of the delay.
5. Although the State cannot be a favoured litigant, some amount of pragmatism has to be incorporated while considering a condonation application.
6. Viewed from such perspective, we find that a plausible reason for the delay has been made out.
7. Accordingly, CAN 1 of 2024 is allowed, thereby condoning the delay in preferring FAT 176 of 2024.
8. There will be no order as to costs.
9. The appeal is deemed to stand registered and admitted.

Re: FAT 176 of 2024
CAN 2 of 2024

10. The point involved in the first appeal is brief and, as such, we take up the appeal along with the application for stay for hearing together by dispensing with all other formalities, including the preparation of paper books as well as bringing the trial court records.
11. In view of the appearance of the respondent through counsel, the appeal be treated to be ready as regards service.
12. The present appeal has been preferred against a decree of eviction passed against the appellants.
13. The decree was passed on the basis of a quit notice under Section 106 of the Transfer of Property Act, 1882.

14. Learned counsel appearing for the appellants argues that the impugned judgment and decree are bad on two-fold grounds. First, separate notices under Section 106 of the Transfer of Property Act, 1882 and Section 80 of the Code of Civil Procedure were issued, the latter succeeding the former.
15. Secondly, it is argued that although independent tenancies were given to the appellants by the respondent for three different portions, a composite notice under Section 106 of the Transfer of Property Act, 1882 was issued and a single suit was filed for eviction. Thus, the suit, it is contended, was bad for mis-joinder of causes of action and the notice was also vitiated for clubbing different and distinct tenancies.
16. Learned senior counsel appearing for the respondent opposes such contentions and submits that there cannot be any conflict between two separate notices being issued – the first under Section 106 of the Transfer of Property Act, 1882 and the second under Section 80 of the Code of Civil Procedure. That apart, learned senior counsel takes the Court through the impugned judgment to argue that the stand of there being separate tenancies regarding the separate portions was taken by the appellants in the trial court but the appellants failed to furnish any material document and/or or credible oral evidence to substantiate the same.
17. After hearing learned counsel for the parties, we are unable to agree with either of the grounds taken by the appellants.

18. Insofar as the notices under Section 106 of the Transfer of Property Act, 1882 and under Section 80 of the Code of Civil Procedure are concerned, the said two notices are of different genres and emanate from different statutes. Such notices operate in different fields and accordingly are to be given separately. Whereas a notice under Section 106 of the Transfer of Property Act, 1882 is given for the purpose of severing the lesser-lessee relationship, a notice under Section 80 of the Code of Civil Procedure is a notice of suit.
19. Thus, it may very well be that the notice under Section 106 is given earlier, which furnishes cause of action for the suit and thereafter a notice under Section 80, prior to filing of the suit, is issued. Hence, we do not find any illegality in such mode adopted by the plaintiff/respondent.
20. Insofar as the second ground is concerned, we agree with the submissions of learned senior counsel appearing for the respondent, inasmuch as it is evident from the impugned judgment itself, as well as the materials on record, that no proof whatsoever of separate tenancies regarding separate portions of the suit premises having been granted has been furnished in the trial court by the appellants at any point of time.
21. Thus, the learned Trial Judge was justified in decreeing the suit by disbelieving such case of the appellants.
22. Accordingly, we do not find any merit in the appeal.
23. Hence, FAT 176 of 2024 is dismissed on contest, thereby affirming the judgment and decree dated May 19, 2023 passed by the learned

Judge, Eleventh Bench, City Civil Court at Calcutta in Title Suit No. 1512 of 2016, whereby a decree of eviction was granted against the appellants.

24. CAN 2 of 2024 is accordingly disposed of.
25. Taking note of the pendency of the appeal till now, we extend the time to the appellants for vacating the premises till 90 days from date.
26. There will be no order as to costs.
27. A formal decree be drawn up accordingly.
28. At this juncture, after the above judgment is passed, learned counsel appearing for the appellants seeks an order of stay of the above judgment.
29. However, since we have already granted 90 days for the appellants to vacate the premises in terms of the decree, which coincides with the period of appeal from our judgment, we do not find any necessity to grant any further stay of the judgment.
30. Accordingly, such stay is refused.
31. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)