

D/L.4 & 5.
January 19, 2026.
MNS.

FMA No. 1347 of 2025
+
CAN 1 of 2025

Rajat Nandi
Vs.
Srabani Ghosh (Paul)

with

FAT 358 of 2025
+
CAN 1 of 2025
+
CAN 2 of 2025
+
CAN 3 of 2025

Rajat Nandi
Vs.
Srabani Ghosh Paul and another

Mr. Prantick Ghosh,
Mr. Siddhartha Sarkar,
Mr. Sourav Gupta

... for the appellant.

Mr. Souradipta Banerjee,
Mr. Rudranil Mitra,
Mrs. Fatima Hassan

...for the respondent no. 1.

1. The affidavit-of-service filed in Court today be kept on record.
2. At the outset, an objection as to maintainability of the First Miscellaneous Appeal is raised by learned counsel for the respondent no. 1 on the ground that by its very nature, the miscellaneous case under Order XXI Rules 97 to 101 of the Code of Civil Procedure (Code), under which

provision the case was filed and from which the appeal arises, is incapable of valuation.

3. The impugned order having been passed by the learned Civil Judge (Senior Division), it is submitted that this Court does not have pecuniary determination to take up the matter but the appeal ought to have been filed before the concerned District Judge.

4. However, although it is true that under the Civil Rules and Orders framed by this Court, an application under Order XXI Rules 97 to 101 of the Code is registered as a miscellaneous case, the valuation of the suit in connection with which the said application filed is to be taken as the parameter for determination of pecuniary jurisdiction, since the court taking up an appeal against a deemed decree passed in an execution case has to be the same as the court of appeal against the decree passed in the principal suit itself, in order to maintain parity in the appellate hierarchy.

5. Going by the said standard, since the suit was valued above the pecuniary appellate jurisdiction of the District Court, it is this Court which has determination, in the pecuniary sense, to entertain the appeal.

6. Accordingly, the objection as to maintainability of the present appeal on the ground of lack of pecuniary jurisdiction is turned down and the appeal is taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

Re: FMA 1347 of 2025.

7. The first miscellaneous appeal, bearing FMA No. 1347 of 2025, has been preferred against a deemed decree passed on the application filed by the appellant, an admitted purchaser from the judgment-debtor, under Order XXI Rules 97 to 101 of the Code of Civil Procedure, whereby such application was dismissed.

8. Learned counsel for the appellant seeks to argue on the merits of the case.

9. However, in view of a challenge within the contemplation of Order XXI Rule 99 of the Code being maintainable only at the instance of a third party-judgment resistor, the present appellant, who claims by purchase through the judgment debtor did not have *locus standi* to maintain such an application.

10. It is well-settled that persons claiming through the judgment-debtors come within the same bracket as the judgment-debtors themselves, insofar as the execution case is concerned, and are not entitled to maintain an application under Order XXI Rule 97 or 99 of the Code.

11. Accordingly, the application by the appellant before the executing court, effectively under Order XXI Rule 99, was not at all maintainable at the outset.

12. Hence, the observations on merits arrived at by the learned Executing Court while passing the impugned deemed decree were erroneous *ex facie*, since in view of the application itself not being maintainable, the executing

court was not empowered to enter into the merits of the case at all.

13. Accordingly, although we hereby observe that the findings on merits entered into by the executing court while passing the impugned deemed decree are not valid in the eye of law, at the same time, the conclusion arrived at in dismissing the application was justified, thereby precluding us from interfering with the impugned deemed decree.

14. Accordingly, FMA No. 1347 of 2025 is dismissed under Order XLI Rule 11 of the Code, thereby affirming the impugned order, however, with the observation that the findings arrived at by the learned Executing Court on merits in the impugned deemed decree shall not be binding on either of the parties.

15. Consequentially, CAN 1 of 2025 is dismissed as well.

Re: FAT No. 358 of 2025

16. We find two defects from the report of the Additional Stamp Reporter.

17. First, it has been mentioned that the name of the sole appellant does not find place in the cause title of the impugned decree.

18. However, since the appellant was not a party to the suit but seeks to leave to prefer the appeal, the said report is incorrect and be hereby ignored.

19. Insofar as the second defect in the impugned decree is concerned, the records shall be sent down to the trial court, subject to the outcome of the application for leave

and the condonation application, which we presently take up for hearing.

Re: CAN 1 of 2025 (leave to prefer appeal)

20. Heard learned counsel for both the parties on the application seeking leave to prefer the appeal.

21. The brief backdrop is that a decree of specific performance of contract was passed against the predecessor-in-interest of the present appellant. The appellant purchased the suit property from the defendant during pendency of the suit. However, such purchase was in the teeth of an injunction order restraining, *inter alia*, such transfer in favour of third parties, which was binding on the vendor of the present appellant, that is, the defendant in the suit.

22. The proposed appellant raises a question as to whether any notice of the suit or summons was served on the defendant at all and alleges that the decree was obtained behind the back of the original defendant.

23. Secondly, it is argued that the purchase of the appellant, being in the teeth of the injunction order, although might have been irregular, but is not illegal, being otherwise in accordance with the Transfer of Property Act, the Registration Act and the Indian Stamp Act.

24. Heard learned counsel for the parties.

25. Both the above questions are required to be dealt with conclusively while deciding the appeal, upon taking

into consideration the materials on record and the governing laws on the issues.

26. However, it would be premature to conclusively decide the said issues at the present stage of granting leave. Thus, for the purpose of the present application, we find that a sufficient cause of action has been raised by the appellant for granting him leave to prefer the appeal.

27. Accordingly, CAN 1 of 2025 is allowed, thereby granting leave to the appellant to prefer the appeal, bearing FAT No. 358 of 2025.

28. However, it is made clear that the questions raised in the present application are kept open for being adjudicated finally on merits at the time of final adjudication of the appeal, subject to the condonation application being allowed in the first place.

29. There will be no order as to costs.

Re: CAN 2 of 2025 (condonation)

30. The application for condonation of delay, bearing CAN 2 of 2025, is now taken up for hearing.

31. On the prayer of learned counsel for the respondent no. 1, the plaintiff/respondent no. 1 is granted liberty to file an affidavit-in-opposition to the application within a fortnight from date. Affidavit-in-reply thereto, if any, shall be filed within a week thereafter.

32. The application shall next be listed on February 16, 2026 under the heading "Application".

33. Service of notice on the defendant no. 2 is dispensed with in view of no relief having been sought in the appeal against the said respondent.

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