

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 358 of 2025
with
CAN 2 of 2025
with
CAN 3 of 2025

Rajat Nandi
Vs.
Smt. Srabani Ghosh (Paul) and Anr.

For the appellant	:	Mr. Prantick Ghosh, Mr. Siddhartha Sarkar, Ms. Poulami Saha, Mr. Sourav Gupta, Advs.
For the respondent no. 1	:	Mr. Souradipta Banerjee, Ms. Fautima Hassan, Advs.
Heard on	:	February 16, 2026.
Judgment on	:	February 16, 2026.

Sabyasachi Bhattacharyya, J.:

1. Affidavits in opposition and reply filed today be kept on record.

2. At the outset, learned counsel for the respondent no. 1/decreed holder points out to several discrepancies in the condonation application.
3. Learned counsel places the contents of sub-paragraph (j) of paragraph no. 2 of the condonation application, where it has been stated that on July 24, 2023, the appellant/petitioner was dispossessed from the suit property and came to know about the existence of the judgment and decree impugned in the present appeal on August 24, 2023.
4. Thereafter, an application under Order XXI Rules 99 to 101 of the Code of Civil Procedure, bearing Miscellaneous Case no. 243 of 2023, was preferred by the appellant. Only after losing before the executing Court in the said case, an appeal was preferred against the deemed decree passed therein along with the present appeal.
5. Again, in sub-paragraph (q) of paragraph no. 2 of the application, it has been stated that the petitioner met his advocate-on-record in the Trial Court to collect the documents from his office on June 20, 2017 and the advocate-on-record asked the appellant/petitioner to meet him in June 27, 2017. Thereafter, on July 10, 2017, allegedly the appellant/petitioner

was informed by the clerk of the said advocate that some of the records were found available “from the garbage”. Subsequently, the appellant, according to sub-paragraph (q), collected the available documents on July 15, 2017.

6. Thus, it is argued that it will be evident from the averments in the condonation application itself that the defendant/appellant derived knowledge of the impugned judgment and decree dated August 25, 2017 in the year 2017 itself.
7. Moreover, it is argued that in the affidavit-in-reply filed to the opposition, the appellant has repeated and reiterated the statements made in the condonation application.
8. We find several discrepancies in the application for condonation of delay.
9. The negligent conduct of the appellant is also evident from the averments made in the present application for condonation itself.
10. It is not understandable as to how the appellant derived knowledge of the *ex parte* decree dated August 25, 2017 on June 20, 2017.
11. Thus, it has to be construed, in the perspective of the averments made in the condonation application, that the

knowledge derived in July, 2017 by the appellant was regarding the pendency of the suit itself.

12. Further contradictory pleas have been taken in the condonation application, sometimes stating that knowledge of the *ex parte* decree was derived in the year 2023, whereas in other places, in the year 2025.
13. Irrespective of all the other averments and the discrepancies therein, there cannot be any doubt that at least in the year 2023, the appellant had knowledge of the *ex parte* decree, since Miscellaneous Case no. 243 of 2023 was preferred by the defendant/appellant under Order XXI Rules 99 to 101 of the Code of Civil Procedure in connection with the execution case levied from the *ex parte* decree.
14. A proceeding under Order XXI Rules 99 to 101, it may be noted, is not an alternative remedy to a regular appeal against the parent decree. The two operate on separate footings. Whereas, under Order XXI Rules 99 to 101 of the Code, a third party-judgment resistor is entitled to claim his title independent of the judgment debtor, the present appeal from the main decree has been premised on the alleged purchase of the appellant from the judgment debtor in the suit, therefore

claiming title through the judgment debtor. Thus, the said pleas are contradictory to each other and cannot be construed to be alternative remedies which were erroneously pursued by the appellant.

15. Hence, the benefit of Section 14 of the Limitation Act cannot be made available to the appellant as well.
16. It is evident that only after waiting for the outcome of the miscellaneous case filed by the appellant under Order XXI Rules 99 to 101 of the Code, the appellant chose to prefer the present appeal after suffering a defeat therein.
17. Thus, a chance was taken by the appellant, which itself is indicative of the *mala fide* nature of the application. Moreover, the appellant was grossly negligent, since there is no plausible explanation as to why no regular appeal was preferred with leave (since the appellant was not a party to the suit) before the year 2025, when the appellant learnt of the decree for the first time as long back as in the year 2023.
18. In such view of the matter, we do not find sufficient explanation having been furnished for the delay in preferring the appeal.

19. Accordingly, CAN 2 of 2025 is dismissed on contest without any order as to costs. FAT 358 of 2025 stands accordingly dismissed as time-barred.
20. CAN 3 of 2025 is consequentially disposed of as well.
21. There will be no order as to costs.
22. The parties and all concerned 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.)

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16.02.2026
(SSS)