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 Sandip Kumar De

FMAT 355 of 2026
with
CAN 1 of 2026
with
CAN 2 of 2026

Mrs. Rajashree Ray (Bandopadhyay)
Vs.
Dr. Partha Sarathi Ray

For the appellant	:	Ms. Sohini Bhattacharya, Adv.
For the respondent	:	Mr. Gopal Chandra Ghosh, Sr. Adv., Mr. Rajkrishna Mondal, Ms. Sunandana Saha, Advs.
Heard on	:	October 5, 2026.
Judgment on	:	October 5, 2026.

Sabyasachi Bhattacharyya, J.:

1. Heard learned counsel for the parties.

2. It transpires from the certified copy of the impugned order that the limitation period for filing the appeal expired on or about August 1, 2026, whereas the appeal has been presented on September 2, 2026. Accordingly, there was a delay of about 33 days in the interregnum.

3. From the condonation application, we find that in the meantime, an application under Article 227 of the Constitution of India was filed erroneously against the impugned order, whereby an injunction was vacated under Order XXXIX Rule 4 of the Code of Civil Procedure, making the impugned order amenable to an appeal.

4. Thus, we find sufficient explanation due to such bona fide error on the part of the appellant in the delay occasioned in preferring the appeal.

5. Hence, CAN 1 of 2026 is allowed on contest, thereby condoning the delay in preferring FMAT 355 of 2026.

6. The appeal is admitted, to be heard on the grounds taken in the memorandum. On the consent of the parties, the appeal is itself taken up for hearing along with the application.

7. The short conspectus of the appeal is that the learned Trial Judge vacated an ad-interim order initially granted in favour of the plaintiff/appellant without assigning a single line of reasoning whatsoever. The only semblance of reason attributed in the impugned order is that the plaintiff/deponent was not present in person before the court.

8. We fail to understand as to how the absence of the plaintiff/appellant in person before the Court could be relevant for vacating the ad-interim order of injunction without any case being made out under Order XXXIX Rule 4 of the Code of Civil Procedure at all. The impugned order is also vitiated by utter dearth of reasons.

9. In view of the reasons given above, FMAT 355 of 2026 is allowed on contest, thereby setting aside the impugned order, bearing Order no. 54 dated July 2, 2026 passed by the learned Judge, Thirteenth Bench, City Civil Court at Calcutta in Title Suit no. 1729 of 2018.

10. Consequentially, CAN 2 of 2026 is also disposed of.

11. It is expected that the learned Trial Judge shall dispose of the application filed by the defendant/respondent under Order VII Rule 11 of the Code of Civil Procedure as expeditiously as possible, preferably within three weeks after the reopening of the Trial Court subsequent to the upcoming Annual vacation of the said court. Immediately thereafter, depending on the outcome of the said application for rejection of plaint, the learned Trial Judge shall take up for hearing the injunction application and dispose of the same as soon thereafter as possible.

12. There will be no order as to costs.

13. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

I agree. (**Sabyasachi Bhattacharyya, J**.)

(**Sandip Kumar De, J**.)

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(SSS)