

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

FAT440 of 2025
(CAN 1 of 2025)
(CAN 2 of 2025)

Mohan Agarwal
Vs.
Biplab Chakraborty and another

For the appellant : Mr. Ayan Banerjee
Ms. Debjani Sengupta
Ms. Poulami Ghosh

For the respondents : Mr. Debdipto Banerjee
Mr. Soumen Banerjee

Heard on : 11.11.2025, 01.12.2025& 05.01.2026

Judgment on : 05.01.2026

Sabyasachi Bhattacharyya, J.:-

1. The affidavit-in-opposition and affidavit-in-reply filed today in court are taken on record.
2. CAN 1 of 2025 is an application for condoning the delay of about 2222 days in preferring the appeal.

3. The appeal has been preferred against the dismissal of a suit, purportedly under Section 10 of the Code of Civil Procedure.
4. By way of explanation for the delay in preferring the appeal, the appellant has pleaded that initially an application for review of the impugned judgment was taken out.
5. The said review application was initially entertained but culminated in dismissal in the year 2024.
6. Thereafter, upon legal advice, a revisional application was preferred against the said dismissal. During pendency of the revision, being properly advised, the petitioner took leave from the revisional court to prefer a challenge by way of an appeal against the impugned decree. Pursuant to such leave, the present appeal has been preferred.
7. Learned counsel for the appellant argues that the appellant is a layman in law and acted as per the legal advice given to him and at no point of time, any mala fides could be attributed to the appellant. It is submitted that the appellant proceeded with due diligence before the forum chosen by legal advice and as such cannot be faulted for the delay in preferring the instant appeal.
8. In reply, learned counsel for the respondents opposes the prayer for condonation of delay and submits that review and appeal are not alternative remedies and operate in different fields. That apart, it is submitted that the appellant protracted the matter indefinitely by first taking out a review application and thereafter a revisional application

and only thereafter taking recourse to the remedy of appeal. As such, it is prayed the application be dismissed.

9. Upon hearing learned counsel for the parties, this court is of the opinion that keeping in view that the appellant is a layman in law and proceeded diligently before the chosen forum as per legal advice by way of a review application, which was initially entertained and only dismissed in the year 2024, and thereafter filing a revisional application against such dismissal, no mala fide can be attributed to the appellant on such account.
10. It is not in dispute that the review application, which was also initially entertained by the concerned court, was pursued by the appellant diligently all along and thereafter a revisional application was also preferred, obviously upon legal advice. As such, this court is of the opinion that the delay occasioned in preferring the appeal was *bona fide* on the part of the appellant.
11. However, we also observe that due to the prolonged delay and the harassment suffered by the respondents due to such delay, the respondents are required to be compensated by costs.
12. Accordingly, CAN 1 of 2025 is allowed, thereby condoning the delay in preferring FAT 440 of 2025. The said appeal shall stand registered and admitted accordingly. However, the above order is subject to payment of costs of Rs. 20,000/- to be paid by the appellant to the respondents, directly or by account payee cheque/cheques drawn in

favour of either or both of the respondents, payable within a week from date.

13. Subject to payment of such costs, the above order shall take effect. In default of payment of such costs within the stipulated period, however, the above order shall stand recalled and the condonation application shall stand automatically dismissed without further reference to the court; consequentially, the appeal shall also stand dismissed as time-barred.
14. Since the ambit of the appeal is extremely limited, on consent of the learned counsel of both the parties and in order to avoid unnecessary prolongation of litigation, which could be detrimental to both sides, we take up the appeal for hearing upon dispensation of preparation of formal paper books and/or calling for the trial court records.
15. The learned trial Judge, on the premise that at the juncture when the present suit was filed, a previous suit at the behest of the plaintiff/appellant was already pending, dismissed the suit itself, purportedly under Section 10 of the Code of Civil Procedure.
16. Such an approach is unheard of. It is well-settled that Section 10 of the Code of Civil Procedure merely empowers a court to stay its hands in a subsequent suit if the matters in issue in a previously instituted suit and the subsequent suit are substantially and directly the same. However, there is nothing within the four corners of Section 10 which permits a court to dismiss the subsequent suit altogether.

17. Thus, the impugned judgment and decree are *ex facie* illegal. Accordingly, the same cannot be sustained.
18. Thus, FAT 440 of 2025 is allowed on contest, thereby setting aside the impugned judgment and decree dated August 7, 2018 passed by the learned Civil Judge (Senior Division), Second Court at Uluberia, District: Howrah in Title Suit No. 298 of 2015 and remanding the suit to the said court for a fresh adjudication on merits.
19. We make it clear that since in the meantime the previous suit has been dismissed as withdrawn, the fetter under Section 10 of the Code of Civil Procedure does not apply any longer and the learned trial Judge shall proceed to dispose of the present suit i.e. Title Suit No. 298 of 2015, in accordance with law on its merits. It is expected that the suit shall be disposed of as expeditiously as possible, preferably within one year from the date of communication of this order to the learned trial Judge.
20. There will be no order as to costs.
21. 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.)