AD-18
Ct No.16
12.11.2026
TN

FMAT 416 of 2026
IA No: CAN 1 of 2026
CAN 2 of 2026

Basant Baid
Vs.
Avinash Sethi and another

Mr. Debdut Mukherjee,
Mr. Anujit Biswas
....for the appellant

Ms. Rajashree Venkut Kundaha
....for the respondent no.1

Re: CAN 1 of 2026

1. Heard learned counsel for the parties.

2. The delay in preferring the present appeal, against an interim order of injunction, is of about 408 days. Learned counsel for the appellant, placing reliance on the averments made in the condonation application, submits that previously an eviction suit had been filed and was pending at the behest of the appellant and other lessors against several defendants including a proprietorship firm.

3. During pendency of the same, the suit from which the present appeal emanates was filed in the City Civil Court at Calcutta by a third party to the earlier suit, that is, the present respondent no.1, claiming to be the current proprietor of the said proprietorship concern, in the capacity of grandson of the original proprietor who was a defendant in the eviction suit.

4. In connection with the said second suit, initially an ad interim order of injunction was passed, against which an appeal was preferred. However, the said ad interim order was not extended.

5. Subsequently, however, the temporary injunction application was disposed of finally by the present impugned order and injunction granted against the appellant in the second suit. In the said second suit, due to the absence of the learned Advocate of the defendant/appellant (for certain unavoidable reasons according to the appellant), the suit was fixed on the *ex parte* board, granting the defendant/appellant only the liberty to cross-examine the plaintiff's witnesses. However, the defendant/appellant was precluded from filing his written statement in the suit.

6. Subsequently, on a change of counsel, applications were duly filed for taking the second suit off the *ex parte* board and to permit the defendant/appellant to file a written statement therein. Other steps were taken in respect of the litigation as well upon such change of counsel.

7. It is submitted by learned counsel for the appellant that during the relevant juncture, the appellant was advised by his then learned counsel to the effect that due to pendency of the eviction suit before this Court, no further step was required to be taken against the order impugned currently in the present appeal.

8. Going by such advice, the appellant, who is otherwise a layman in law, did not prefer the appeal in time.

Subsequently, however, on the change of counsel, the appellant was better advised and has preferred the instant appeal.

9. Learned counsel for the respondent no.1 opposes the said application.

10. We find from the affidavit-of-service filed today in Court, which is kept on record, that both the respondents have been duly served.

11. Upon hearing learned counsel, we find no justification on the part of the appellant to prefer the present appeal late.

12. Even without going into the question as to whether the appellant suffered due to the laches of his Advocate, insofar as the suit being fixed on the *ex parte* board and non-filing of the written statement is concerned, we otherwise find laches on the part of the appellant which we proceed to discuss below.

13. Before doing so, we must refer to a judgment of the Hon'ble Supreme Court cited by the appellant, being *Rafiq and another vs. Munshilal and another*, reported at *(1981) 2 SCC 788*, where it was observed, *inter alia*, that a party is not at fault, who, having done everything in his power expected of him, would suffer because of the default of the advocate. The problem that was recorded to have agitated the Hon'ble Supreme Court was whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The said question was answered in the negative.

14. However, in the present case, it is not the misdemeanour or default of the then learned Advocate for the appellant which we are bothered with.

15. The present appellant himself, who has a business and is not a rustic villager, was aware that an appeal lies against grant of an injunction order, since initially an appeal had been preferred at the behest of the appellant himself at the ad interim stage of injunction. Thus, it does not lie in the mouth of the appellant that he is a layman and was not aware of the necessity to prefer an appeal if the shoe pinches the appellant in respect of an injunction order.

16. Moreover, insofar as being adversely affected by an order of the Court is concerned, a litigant who is so affected and is aware that an appeal can be preferred against the same cannot be said to have been swayed by legal advice to the effect that mere pendency of another suit in a different context would render it unnecessary for preferring such appeal. We say so particularly because at a previous instance, an appeal had actually been preferred by the appellant against an ad interim order of injunction..

17. Thus, we do not find any justification for the appellant not to have taken recourse to the same legal remedy when the temporary injunction application was finally allowed against the appellant.

18. In view of the above, we do not find sufficient explanation being given for the delay of about 408 days in preferring the appeal.

19. Accordingly, CAN 1 of 2026 is dismissed on contest against the defendant no.1 and *ex parte* against the plaintiff/respondent no.2.

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20. Hence, FMAT 416 of 2026 is dismissed as time-barred.
21. CAN 2 of 2026 is also disposed of consequentially.
22. There will be no order as to costs.
23. 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.)

(Md. Shabbar Rashidi, J.)