Court No. 6
(265719)

20.11.2026
(AD 2)

(S. Banerjee)

CO 3810 of 2026

Prabir Chandra Kundu
Vs.
Pradip Kumar Kundu & Ors.

Mr. Swarnendu Ghosh, Sr. Advocate
Mr. Debdut Mukherjee
Mr. Uttam Bhattacharyya
Mr. Kaustuv Misra
...for the petitioner

Mr. Indranath Mukherjee
Mr. Prosenjit Saha
...for the opposite-party no. 1

On November 17, 2026 an order was dictated in open court after hearing the learned advocates for the respective parties. However, before rising of the court on that day, Mr. Ghosh, learned Senior Advocate for the petitioner drew the attention of the Court to a decision of the Hon'ble Supreme Court in the case of *Chandi Prasad & Ors. –Vs.- Jagdish Prasad & Ors.*, reported at (2004) 8 SCC 724 in support of his contention that dismissal of an appeal as time barred does not attract the doctrine of merger. However, since the said decision was cited after the order was dictated and in the absence of the learned advocates for the opposite-party no. 1, this Court feels that the parties should be given a further opportunity to submit on the issue of maintainability of the review application.

For such reason, this Court is inclined to recall the unsigned order which was dictated on November 17, 2026.

The unsigned order dictated on November 17, 2026 is recalled and the civil revisional application stands restored to its original file and number. The unsigned order dictated on November 17, 2026 shall be retained in the records of this case.

The petitioner herein filed an application for review of the judgment and decree dated August 31, 2019 passed by the learned Judge, 10th Bench, City Civil Court at Calcutta in Title Suit No. 646 of 2007 which was registered as Misc. Case No. 1957 of 2019. During the pendency of the said review application the opposite-party no. 1 preferred a first appeal before the Hon'ble Division Bench being FAT 86 of 2023 accompanied with an application under Section 5 of the Limitation Act which was registered as CAN 2 of 2023. By a judgment and order dated January 28, 2026, the application for condonation of delay being CAN 2 of 2023 stood dismissed on contest, consequently the first appeal stood dismissed as time barred.

The issue that arises for consideration is whether a pending review application can be dismissed as not maintainable on the ground that an appeal against the original decree, filed subsequent to

the review application, stood dismissed as time barred upon dismissal of the application under Section 5 of the Limitation Act.

Considering the issue involved and also that the decision on such issue may have wider ramifications, this Court is inclined to appoint Amici Curiae to assist this Court on such issue.

Mr. Sakti Nath Mukherjee and Mr. Aniruddha Chatterjee, learned Senior Advocates, are appointed as Amici Curiae in this matter.

List this matter on December 2, 2026 under the heading 'For orders' fixed at 12 noon.

(Hiranmay Bhattacharyya, J.)