

19th May,
2026
(AK)
16

FMAT 492 of 2025

IA No: CAN 1 of 2026

CAN 2 of 2026

Kailash Dutta
Vs.
Sukumar Dutta and others

Mr. Ayanava Bhattacharya
Ms. Tina Biswas

....For the appellant.

1. Despite service, none appears for the respondents.
2. Affidavit-of-service filed in court today be kept on record.
3. The primary ground of condonation of delay, as made out in the condonation application, is that due to *bona fide* error, an appeal was filed against the impugned order before the concerned District Court.
4. The appeal was initially kept pending and ultimately, by an order dated November 17, 2025, the appeal was dismissed on the ground that the said court did not have pecuniary jurisdiction to take up the appeal.
5. Immediately thereafter, the present appeal has been preferred before this court.

6. On a perusal of the said explanation, this court is satisfied that sufficient cause for the delay has been made out.
7. We cannot attribute any lack of *bona fides* or negligence on the part of the appellant, since the appellant acted on legal advice and such advice was initially vindicated by the appeal preferred before the wrong forum having been entertained and kept pending.
8. Thus, CAN 2 of 2026 is allowed, thereby condoning the delay in preferring the appeal.
9. Leave is granted to the learned Advocate-on-record for the appellant to rectify the preamble of the Memorandum of Appeal by incorporating the name of the learned Trial Judge during the course of the day.
10. The present appeal has been preferred against the dismissal of a temporary injunction application filed by the plaintiff/appellant in a partition suit.
11. The premise of the plaint case is that the predecessors-in-interest of the parties, being three brothers, owned the property.
12. Out of the three brothers, one died issueless, through whom the plaintiff claims his share in the property.

13. However, in the written objection filed by the defendant/respondents, it was made out that the said deceased predecessor-in-interest, who died issueless and through whom the plaintiff claims, had executed a deed of settlement prior to his demise, granting his entire share in the property in favour of the defendants.
14. On the premise of the same, the learned Trial Judge dismissed the injunction application.
15. We find from the impugned order that the same cannot be faulted in view of there being no challenge to the purported deed of settlement executed by the alleged predecessor-in-interest of the plaintiff, which was on record on the said date.
16. However, we are apprised that the plaintiff/appellant has subsequently made an application for amendment of the plaint by introducing a relief challenging the said purported deed of settlement, which has been allowed, thereby incorporating a prayer in the plaint challenging the purported deed of settlement executed in favour of the defendants.
17. Thus, the complexion of the suit changes somewhat in view of a challenge having now been preferred against the deed of settlement, which was not there

before the learned Trial Judge at the relevant juncture when the impugned order was passed.

18. However, since the learned Trial Judge was justified in refusing injunction in view of the existence of the deed of settlement being unchallenged on that date, we do not interfere with the said order.
19. Accordingly, FMAT 492 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
20. Consequentially, CAN 1 of 2026 is also dismissed.
21. We make it abundantly clear that nothing in the above order or the dismissal of the temporary injunction application of the plaintiff/appellant shall preclude the plaintiff/appellant from taking out a fresh injunction application, since the cause of action for grant of temporary injunction is a continuing one.
22. If such an application is preferred, the learned Trial Judge shall, upon giving adequate opportunity to both sides to be heard and to file their respective pleadings, dispose of the same in accordance with law without being unnecessarily influenced by the present order or the order impugned in the present appeal, by taking into consideration the effect of the amendment to the plaint subsequently incorporated on the prayer of the plaintiff/appellant, challenging

the purported deed of settlement executed in favour of the defendant/respondent.

23. There will be no order as to costs.
24. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Biswaroop Chowdhury, J.)