

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Chaitali Chatterjee (Das)

F.A.T. 33 of 2024

Dipali Chakraborty & Ors.
Vs.
Purnima Chakraborty & Ors.
With
CAN 1 of 2024
CAN 2 of 2024

For the Appellants : Mr. Bapi Sarkar
Mr. Roumyadip Saha

For the Respondents : Mr. Bhaskar Roy Mahasaya
Ms. Taniya Bhowmik

Heard & Judgment on : **January 8, 2026**

Debangsu Basak, J.:-

1. Appeal and the connected applications are taken up for final hearing.

Attempt for mediation was made which did not succeed.

2. Appellants seek to prefer the appeal directed against a preliminary decree passed in a suit for partition. Preliminary decree was passed on May 23, 2011.
3. CAN 1 of 2024 is an application for condonation of delay while CAN 2 of 2024 is an application seeking stay of the proceedings.
4. Learned advocate appearing for the appellants submits that the appellants were seriously inconvenienced due to the death of the defendant no. 1 and thereafter due to the death of one of the son of the defendant no. 1 as also the son-in-law of the deceased defendant no. 1.
5. Learned advocate appearing for the appellants submits that, the defendant no. 1 expired in 2016. Thereafter the son-in-law of the defendant no. 1 expired. Subsequently, the son of the defendant no. 1 expired. All these deaths resulted in preventing the appellants from contesting the suit for partition.
6. Learned advocate appearing for the appellants submits that the appellants became aware of the preliminary decree and subsequent steps taken in the execution proceedings. Immediately thereafter, appropriate steps were taken by the appellants for the purpose of contesting the suit as also filing of the present appeal.

7. Referring to the length of the delay, learned advocate appearing for the appellants submits that, length of delay par se is not relevant. What is relevant is that whether or not adequate explanation is offered by the appellants for condonation of delay. He submits that, in the facts of the present case, appellants offered substantial explanation for the delay. The explanation should be considered leniently and delay in making and filing the appeal should be condoned. In support of such contentions of his case, learned advocate appearing for the appellants relies upon **(1987) 2 SCC 107 (Collector, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji & Others)**, **(1998) 7 SCC 123 (M. Balakrishnan vs. M. Krishnamurthy)** and **(2012) 12 SCC 693 (B. Madhuri Goud vs. B. Damodar Reddy)**.
8. Learned advocate appearing for the respondent submits that, the preliminary decree was passed on May 23, 2011. The death of the defendant no. 1 occurred on January 3, 2016. Application for substitution of the defendant no. 1 was allowed on December 5, 2018 although the appellants appeared in the suit on April 2, 2018.
9. Learned advocate appearing for the appellants submits that an Advocate Commissioner was appointed in terms of the preliminary decree. Such Advocate Commissioner visited the suit premises on May 12, 2022. The appellants were present during such visit of the Advocate Commissioner

on May 12, 2022. Therefore, the contention of the appellants that they were not aware of the proceedings or the preliminary decree is misplaced.

10. Learned advocate appearing for the appellants submits that the report of the Advocate Commissioner was accepted by the learned Trial Judge on July 4, 2022 and that a final decree was passed on such basis on such date.

Thereafter, execution proceedings were filed.

11. Learned advocate appearing for the respondent draws the attention of the Court to the averments made in the application for condonation of delay as also the affidavit-in-reply. He submits that the appellants did not specify an exact date on which the appellants became aware of the proceedings in the application. However, in the affidavit-in-reply, the appellants claimed that on July 20, 2024, the appellants applied for certified copy of the entire case records and obtained the same on August 14, 2024 when they came to know of the proceedings.

12. In reply, learned advocate appearing for the appellants contends that, the appellants were not present during the visit of the Advocate Commissioner.

13. As noted above, there are two applications which require consideration.

14. CAN 1 of 2024 is an application for condonation of delay.

15. Department reports the delay of 4061 days in preferring the appeal.

16. Application for condonation of delay does not pinpoint the exact when the appellants derived knowledge of the suit.
17. Records made available before us establish that the defendant no. 1 during his lifetime was contesting the suit.
18. Defendant no. 1 entered appearance in the suit. Defendant no. 1 expired on January 3, 2016. Preliminary decree is dated May 23, 2011. Preliminary decree, which is sought to be assailed herein, was passed during the lifetime of the defendant no. 1.
19. Delay between the period from May 23, 2011 till the date of the defendant no. 1 on January 3, 2016 is sought to be explained on the ground that one of the son of the defendant no. 1 and son-in-law of the defendant no. 1 were diagnosed cancer.
20. On a query from the Court, learned advocate appearing for the appellants submits that the defendant no. 1 died intestate being survived by his wife, two sons and a daughter.
21. Son-in-law of the defendant no. 1 expired on December 1, 2021. One of the sons of the defendant no. 1 expired on February 8, 2022.
22. On the death of the defendant no. 1 on January 3, 2016, an application for substitution was filed in the suit for partition. In such substitution proceeding, the appellants entered appearance on April 2, 2018.

23. Application for substitution was allowed on December 5, 2018.
24. The claim that the appellants were aware of the proceeding is belied from the fact that the defendant no. 1 entered appearance in the suit and was contested the same. On his death, in the application for substitution, the appellants entered appearance on April 2, 2018.
25. Therefore, the claim that the appellants were not aware of the suit cannot be accepted.
26. **Mst. Katiji & Anr.** (supra) is of the view that the Court should adopt liberal and justice oriented approach with regard to condonation of delay. It is also of the view that State seeking condonation of delay must be accorded the same treatment as a private party.
27. **Balakrishnan** (supra) is of the view that the words “sufficient cause” should be construed liberally. It is also of the view that acceptability of explanation for the delay is the sole criteria and that length of delay is not relevant. In absence of anything showing *mala fide* or deliberate delay as a dilatory tactic, the Court should clearly condone the delay.
28. In **B. Madhuri Goud** (supra), Supreme Court considers what is “sufficient cause and is of the view that the delay of 1236 days in filing the appeal in the facts and circumstances of this case was not warranted.

29. It is trite law that while construing an application for condonation of delay, the Courts are required to be lenient. While being lenient, the Courts are cautioned not to render the exercise of condonation as an absurd exercise. What is relevant is not the length of the delay but the quality of the explanation offered. If plausible cause is shown explaining the delay, the same should be accepted. What would constitute sufficient cause to explain the delay, will depend upon the facts and circumstances of each case.
30. In the facts and circumstances of the case, a delay in excess of 4061 days is sought to be explained on the ground of death of three members of the family of the defendant No. 1 including the defendant No.1.
31. We noted the sequence of the death of the three members of the family including that of the defendant No.1. We also find that the defendant No.1 was contesting the suit till his death. Moreover, the heirs and legal representatives of the defendant No.1 also entered appearance in the suit at a given stage. They were aware of the suit.
32. The application for condonation of delay does not specify the exact date on which the appellants derived knowledge of the suit. The application for condonation of delay does not explain, at least at a plausible level, as to

the cause for the delay. In fact, the claim that the appellants were unaware of the suit, is belied from the materials on record.

33. There is a preliminary decree passed in the suit for partition. There is also a decree in the suit for partition. The appeal is now said to be preferred against the preliminary decree.

34. In the facts of the present case, we do not find that, the appellants offered any plausible explanation for our acceptance to condone the delay of 4061 days in making and filing the appeal.

35. **CAN 1 of 2024** is therefore **dismissed**.

36. In view of the fact that we are not in a position to condone the delay, F.A.T 33 of 2024 along with connected application being CAN 2 of 2024 are also **dismissed** without any order as to costs.

(Debangsu Basak, J.)

37. I agree

[Chatali Chatterjee (Das), J.]

S.D./Dd