

Miscellaneous Case No. 01 of 2020
CNR WBUD01-000013-2020
Present: Rohan Sinha (JO Code- WB00883)

Premota Sarkar @ Premata Deshi (Died & represented by LRs) versus Niren Sarkar

Order No. 31
09.12.2025

- 1) Today stands appointed for the hearing of this Miscellaneous Case.
- 2) The Learned Advocates for the respective parties grace the Court with their presence.
- 3) Inasmuch as this proceeding has languished for the past five years, this Court, with the consent of the Learned Counsel on either side, takes up the matter for disposal upon an attentive hearing of their submissions.

RERUM EXPOSITIO
(Factual Matrix)

- 4) The Learned Civil Judge (Junior Division), Raiganj, Uttar Dinajpur, by judgment dated 07.10.2005, was pleased to dismiss the suit being Other Class (OC) Suit No. 101 of 1999, whereupon the consequential decree was duly drawn up on 28.10.2005.
- 5) Tasari Deshi and Premota Sarkar, the plaintiffs in the original suit, thereafter preferred an appeal—being OC Appeal No. 17 of 2005—before the Learned District Judge, Raiganj, Uttar Dinajpur; which, by order no. 46 dated 14.07.2011, stood transmitted to this Court for ultimate adjudication.
- 6) During the pendency of the said appeal, the sole defendant invoked the provisions of Order XLI Rule 22 of the Code of Civil Procedure by filing a 'cross-objection', which this Court was pleased to accept.
- 7) Subsequently, appellant no. 1, namely Tasari Deshi, departed for her heavenly abode. Inasmuch as the 'right to sue' devolved exclusively upon appellant no. 2, Premota Sarkar, being the sole legal heir of the deceased, the mandate of Order XXII Rule 2 of the Code of Civil Procedure was duly complied with on 06.02.2019 (order no. 90).
- 8) Thereafter, on 03.09.2019, the matter was adjourned upon a joint prayer of the parties, and 03.12.2019 was appointed for the hearing of the appeal.
- 9) However, on 03.12.2019, none of the parties chose to take any step, in consequence whereof the appeal came to be dismissed for default.

HAEC INSTANTIA
(Present proceeding)

- 10) Premota Sarkar, being the sole surviving appellant as on 02.01.2020, instituted the present Miscellaneous Case under Order XLI Rule 19 of the Code of Civil Procedure on the thirtieth day from the dismissal of the original appeal, invoking Article 122 of the Limitation Act for its restoration.
- 11) The solitary ground articulated in aid of such restoration is that, owing to an inadvertent mis-posting of the adjourned date—recorded as 19.12.2019 in lieu of 03.12.2019—by the law-clerk of the Learned Advocate for the appellant, no steps could be undertaken on 03.12.2019, culminating in the dismissal of the appeal for default.
- 12) During the pendency of this proceeding, the sole petitioner, Premota Sarkar, breathed her last; whereafter her legal heirs were duly permitted to come on record by order no. 03 dated 26.02.2020 in terms of Order XXII Rule 23 of Code of Civil Procedure.

- 13) The defendant/respondent/opposite party has entered appearance in this proceeding and is contesting the same.

ADVERSARIA SUBMISSIO
(Rival Submissions)

- 14) The Learned Advocate for the petitioners contends that, owing to an inadvertent mis-posting of the adjourned date—entered as 19.12.2019 in lieu of 03.12.2019—in the diary of the Learned Advocate for the appellant, no steps were taken on 03.12.2019, thereby occasioning the dismissal of the appeal for default.
- 15) He further submits that no intentional lapse is attributable either to the appellant (now deceased) or to her Learned Counsel, the omission being wholly accidental and devoid of any design to delay the proceeding.
- 16) Accordingly, a prayer is made for the restoration of the appeal to its original file and number.
- 17) The Learned Advocate for the opposite party, contrariwise, invites the attention of this Court to what he describes as the habitual dilatory conduct of the appellant, and submits that, should this proceeding ultimately enure to the benefit of the petitioners, it ought to be visited with the imposition of heavy costs.

DISPUTATIO ET DECISIO
(Discussion & Decision)

- 18) This Court discerns that the following aspects assume decisive significance in adjudicating the merit of the present proceeding—
- a) Order no. 97 dated 03.12.2019, passed in OC Appeal No. 17 of 2005, unequivocally reveals that none of the parties chose to take any step before this Court on the said date.
 - b) Such a circumstance, in all probability, bespeaks a confusion that may have arisen with regard to the fixation of the next date following the proceedings of 03.09.2019 (order no. 96).
 - c) Had it been otherwise, the opposite party—being the sole defendant in the original appeal—would assuredly have taken steps on 03.12.2019.
 - d) Order no. 97 dated 03.12.2019 further demonstrates that the appeal was dismissed for default without affording even a single day's opportunity to the appellant to show cause as to why such dismissal ought not to follow.
 - e) It hardly requires reiteration that a first appeal is a statutory right, not to be lightly curtailed.
 - f) It is likewise a cardinal principle of law that every litigant must be accorded a reasonable opportunity to have his or her grievance adjudicated before a Court of law.
 - g) A scrupulous perusal of the appellate record reveals that the delay in disposal was not solely attributable to the appellant, for the defendant/opposite party too had, on several occasions, sought adjournments on diverse pretexts.
 - h) It is equally well-settled that a suit or a first appeal is not a mere moot or academic disputation, but a solemn pursuit of truth—and truth, as is trite, cannot be permitted to remain ensnared in procedural technicalities.
 - i) In legal parlance, “sufficient cause” signifies a just, bona fide, and reasonable explanation which, when tested on the anvil of prudence and ordinary human conduct, commends itself

to the conscience of the Court as a legitimate ground for excusing a lapse or extending indulgence.

- j) It is not a mechanical formula, but a flexible equitable standard, invoked to prevent the rigours of procedure from defeating the ends of justice.
- k) In the case at hand, the opposite party—whose cross-objection too awaited adjudication—abstained from taking any step on the date of dismissal, i.e., 03.12.2019; a circumstance that fortifies and lends substantial vigour to the ground of restoration put forth by the petitioners herein.

19) For the foregoing reasons, this Court is of the considered view that the present proceeding, having been instituted upon sufficient and compelling grounds, merits an affirmative answer.

20) Accordingly, it is

ORDERED

*that the instant Miscellaneous Case be and same is allowed on contest but with a costs of **Rs. 1000/- (Rupees one thousand)** payable by the petitioners to the opposite party within the adjourned date.*

21) Interim order, if any, stands made inutile.

22) Let the OC Appeal No. 17 of 2005 be restored to its original file, albeit, subject to payment of costs as stipulated above. Note in the relevant register.

23) Let the matter be listed on **22.01.2026** for –

- i. Filing receipt showing the payment of costs; and
- ii. Hearing of OC Appeal no. 17 of 2005.

Dictated & corrected by

1st ADJ, Raiganj
Uttar Dinajpur

1st Additional District & Sessions Judge
Raiganj, Uttar Dinajpur.