



2026:CHC-AS:1138-DB

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

S.A.T 38 of 2026
IA No: CAN 3 of 2026

Malay Kumar Bhunia and others
Vs.
Anupam Kumar Maity and others

For the appellants : Mr. Rabindranath Mahato
Mr. Aritra Shankar Ray

For the respondent
Nos. 1 to 3 : Mr. Mani Sankar Chattopadhyay

Heard on : 14.07.2026 & 28.07.2026

Judgment on : 28.07.2026

Sabyasachi Bhattacharyya, J.:-

1. The belated filing of the certified copy of the decree of the Trial Court is condoned and the same is accepted.
2. At this juncture, learned counsel appearing for the respondent nos.1 to 3 submits on instruction from the respondent no.1, who is personally present in court, that learned counsel shall file



Vakalatnama on behalf of the respondent no. 4, who is the sister of the respondent no.1, within a week from date.

3. On the basis of such undertaking, the matter is taken up, by directing the Vakalatnama executed by the respondent no. 4 to be filed by the learned Advocate for the respondent nos. 1 to 3 within a week.
4. The appeal shall be heard on the following substantial questions of law:
 - i) *Whether the learned First Appellate Court substantially erred in law in dismissing the title appeal itself on the ground that the certified copies of the impugned judgment and decree were filed subsequent to the presentation of the Memorandum of Appeal, instead of construing the date of filing of the said certified copies to relate back to the date of filing of the memorandum of appeal, particularly in view of the fact that the appeal was filed within time.*
 - ii) *Whether the learned First Appellate Court acted in a perverse manner in observing that the appeal was not filed within time, on a palpable miscalculation of the relevant dates pertaining to obtaining the certified copies.*
5. Immediately after admission of the appeal, learned counsel for both parties consent to the appeal itself being disposed of by



this court at the admission stage itself, in view of the short point involved, in order to avoid unnecessary delay.

6. From the impugned judgment dated May 10, 2024 as well as the previous order dated April 19, 2024 passed by the learned First Appellate Court, we find that initially the memorandum of the appeal was taken on record with the observation that it was not filed “within time limit”.
7. However, from the averments made on oath in paragraph nos. 24, 25 and 26 of CAN 3 of 2026, we find that the appeal was filed about one day prior to the expiry of the limitation period of thirty days.
8. The relevant dates in the context are as follows:

<u>Date</u>	<u>Event</u>
January 16, 2024	Trial court’s decree passed
January 22, 2024	Appellants applied for certified copies of judgment and decree of the trial court
March 27, 2024	Requisite number of stamps and folios were notified.
April 2, 2024	The appellants put in the requisites, stamps and folios.
April 19, 2024	Appellants filed Title Appeal



	No.30 of 2024
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9. From the aforesaid turn of events, it is evident that even assuming that the certified copies were handed over to the appellants on the same date when they put in the requisite stamps and folios, that is, April 2, 2024, and taking into account the time lost in between due to the fault of the appellants in applying for the certified copies and in depositing the requisites, we find that from the date of deposit of the requisites, that is, April 2, 2024, 18 days were still left of the limitation period for preferring the appeal, which was due to end on April 20, 2024.
10. The appeal was filed on April 19, 2024, that is, within the limitation period.
11. Thus, the observation of the learned First Appellate Court to the effect that the appeal was not filed within time limit is erroneous.
12. Since the certified copies of the judgment and decree were filed later, we deem the same to be a technical defect, as the memorandum had already been filed and was taken on record.
13. Although, strictly speaking, the date of filing of the appeal ought to have been considered to be the date of filing of the judgment in view of the requirement under Order XLI of the Code of Civil



Procedure to file the certified copy of the impugned judgment along with the appeal, in view of the registration of the appeal on April 19, 2024 by the learned First Appellate Court itself, the date of filing of the judgment and decree should be construed in the facts of the present case to relate back to the date of presentation of the memorandum of appeal and as such, the appeal was to be construed to have been filed within time.

- 14.** Moreover, the appeal ought not to have been dismissed merely because no specific leave was granted to the appellant to prefer the appeal without the copy of the judgment.
- 15.** The appropriate course of action to be taken by the learned First Appellate Court was to construe the certified copies of the judgment and decree to be a part of the memorandum of the appeal, once filed, thereby rectifying the defect in the appeal.
- 16.** The hyper technical approach taken by the learned First Appellate Court cannot be approved of.
- 17.** In such view of the matter, SAT 38 of 2026 is allowed on contest, thereby setting aside the impugned judgment and decree dated May 10, 2024 passed by the learned District Judge, Paschim Medinipur in Title Appeal No.30 of 2024 and remanding the appeal to the learned District Judge for adjudication on merits.



- 18.** In view of the long time spent in the litigation, it is expected that the learned First Appellate Court, be it the learned District Judge himself or any other competent court allocated by him, as expeditiously as possible, preferably within one year from the date of communication of this judgment to the learned First Appellate Court.
- 19.** CAN 3 of 2026 is disposed of accordingly.
- 20.** There will be no order as to costs.
- 21.** For the ends of justice, leave is granted to the learned Advocate-on-record for the appellants to take back the certified copies of the judgment and decree of the trial court for the purpose of presentation before the learned First Appellate Court, upon furnishing photocopies thereof for the records.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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