

19<sup>th</sup> May,  
2026  
(AK)  
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**F.A.T 68 of 2026**  
**IA No: CAN 1 of 2026**

Monisha Bahadur  
Vs.  
Basudeb Bahadur

Mr. Dhananjay Banerjee  
Mr. Achin Jana  
Mr. Prosenjit Ghosh  
Ms. Chetna Rustogi  
Mr. Debojyoti Kumar  
Mr. Darothi Mukherjee

...for the appellant.

Mr. Zubair Ahmed

...for the respondent.

1. Leave is granted to the learned Advocate-on-record for the appellant to carry out the necessary amendments to the memorandum of appeal in order to rectify the defects as pointed out by the Stamp Reporter.
2. The affidavit-of-service filed in court today be kept on record.
3. The present appeal has been preferred after a delay of about 1243 days.
4. The ground for such delay, as sought to be made out by the appellant/wife, is as follows:
5. The impugned decree of divorce was passed *ex parte* on June 21, 2022.

6. The appellant/wife took out an application under Order IX Rule 13 of the Code of Civil Procedure in the year 2022 itself for setting aside such *ex parte* decree.
7. The same was disposed of only on August 25, 2025.
8. Thereafter, the present appeal has been preferred against the self-same *ex parte* decree.
9. Learned counsel appearing for the appellant argues that in view of the appellant/wife exploring the option of Order IX Rule 13 in the meantime, the time taken in disposal of the said proceeding ought to be discounted in calculating limitation for the present appeal.
10. Learned counsel for the appellant cites *N. Mohan vs. R. Madhu*, reported at (2020) 20 SCC 302, and *Bhivchandra Shankar More vs. Balu Gangaram More & Ors.*, reported at (2019) 6 SCC 387, for the proposition that the time taken in pursuing the remedy under Order IX Rule 13 of the Code of Civil Procedure is to be deducted from the limitation period for preferring an appeal.
11. It is submitted that in both the said cases, the appellant had initially preferred an Order IX Rule 13 application, upon the dismissal of which an appeal was preferred.
12. The delay in preferring such appeal was condoned.

13. Learned counsel appearing for the respondent/husband opposes the application for condonation of delay and submits that the appellant/wife chose not to file even her written statement in the suit.
14. Furthermore, it is submitted that the respondent/husband has remarried in the meantime after waiting for the appeal period.
15. Learned counsel for the appellant, in reply, submits that since the case of the appellant/wife is that she never got the summons of the suit, there arose no question of filing any written statement.
16. Secondly, it is submitted that the remarriage of the husband took place during pendency of the application Order IX Rule 13 of the Code of Civil Procedure.
17. Be that as it may, from the judgments of the Hon'ble Supreme Court cited before us, it is evident that the moot question therein was whether an appeal was barred in the event an application under Order IX Rule 13 of the Code of Civil Procedure, filed for recall of the selfsame *ex parte* decree, was dismissed prior to preferring the appeal.
18. In *N. Mohan (supra)*, the Hon'ble Supreme Court observed that the defendant, against whom an *ex*

*parte* decree is passed, has two options, the first is to file an application under Order IX Rule 13 of the Code and the second to file an appeal under Section 96(2) thereof.

19. It was held that the question to be considered was whether the two options are to be exercised simultaneously or can be exercised consecutively.
20. The Hon'ble Supreme Court ultimately came to the conclusion that an appeal under Section 96(2) is a statutory right and the defendant cannot be deprived of the statutory right merely on the ground that earlier, an application filed under Order IX Rule 13 of the Code of Civil Procedure was dismissed.
21. While holding so, the Hon'ble Supreme Court also recorded that the question which fell for consideration before the Court was whether the remedies provided are simultaneous or can be converted into consecutive remedies.
22. The Hon'ble Supreme Court also recognized the legal proposition that although an appeal is maintainable even after dismissal of the application under Order IX Rule 13 of the Code, the converse is not true, that is, if an appeal is dismissed, the defendant cannot file an application under Order IX Rule 13 subsequently.

23. In the context of the said case as well as in the other cited judgment, the Hon'ble Supreme Court observed that the delay could be condoned, in one of the cases on condition that an amount of Rs. 20 Lakh was deposited by the appellant.
24. However, in *N. Mohan (supra)*, the Hon'ble Supreme Court further observed that an unscrupulous litigant may, of course, firstly file an application under Order IX Rule 13 CPC and carry the matter up to the highest forum; thereafter may opt to file appeal under Section 96(2) CPC challenging the ex parte decree.
25. In that event, it was observed, considerable time would be lost for the plaintiff.
26. The Hon'ble Supreme Court further found that in case the Court is satisfied that the defendant has adopted dilatory tactics or where there is lack of *bona fides*, the Court may decline to condone the delay in filing the first appeal under Section 96(2) of the CPC. But where the defendant has been pursuing the remedy *bona fide* under Order IX Rule 13 CPC, if the Court refuses to condone the delay in the time spent in pursuing such remedy, the defendant would be deprived of the statutory right of appeal.

27. In the present case, fact remains that the application under Order IX Rule 13 of the Code filed by the appellant/wife has been turned down.
28. Therefore, the plea that the appellant was not served with a summons or did not have knowledge of the suit has been disbelieved by one competent forum, against which no appeal has been preferred, thereby permitting the order dismissing the said application under Order IX Rule 13 to attain finality.
29. Hence, the very *bona fides* of the appellant is in doubt, as it has not been proved by the appellant in the application under Order IX Rule 13 of the Code that she did not have knowledge of the suit or was not served with the summons of the suit.
30. Even otherwise, the remedies provided Order IX Rule 13 and Section 96 of the Code of Civil Procedure respectively operate in different fields and one cannot be said to be a substitute for the other, to extend the benefit of Section 14 of the Limitation Act to the appellant.
31. Since the characters and scopes of the two remedies are different, nothing prevented the appellant from preferring the appeal, immediately upon coming to know of the *ex parte* decree, and to

wait for the outcome of the Order IX Rule 13 application before pursuing the appeal further.

32. Another facet of the matter cannot be overlooked.
33. Since the remedy of condonation of delay is, at the end of the day, an equitable remedy, we also have to factor in that the respondent/husband has remarried in the meantime and in the event the appeal is entertained by condoning the delay after the inordinate delay of 1243 days, the rights of not only the present parties but others, who have no nexus with the litigation, including the second wife of the respondent and the offspring(s) of the second marriage, if any, will also be adversely affected without such third parties having any hand in the fiasco.
34. Thus, balancing equities and the respective cases of the parties, we are loath to allow the condonation application.
35. Accordingly, CAN 1 of 2026 is dismissed on contest, without any order as to costs.
36. Consequentially, FAT 68 of 2026 is also dismissed as time-barred.

**(Sabyasachi Bhattacharyya, J.)**

**(Biswaroop Chowdhury, J.)**