

AD -7
Ct No.10
23.06.2025
(SSS)

FAT 350 of 2019
With
CAN 1 of 2019
(Old No: CAN 7605 of 2019)

M/s. Kamarhatty Company Limited
Vs.
M/s. Deluxe Packaging (P) Limited and Anr.

Mr. Asha G. Gutgutia (Through VC),
Ms. Rituparna Das
....For the Appellant.

1. The affidavit of service filed today be kept on record.
2. The returned postal articles indicate that insofar as respondent no. 2 is concerned, who is the Director of a sister concern of the respondent no. 1 company, the article has returned with the endorsement that despite service of intimation, the postal article was not collected by the respondent no. 2. We deem the same to be good service.
3. Insofar as the respondent no. 1 is concerned, learned Counsel for the appellant submits that although the envelope has returned with the endorsement "addressee could not be located", the address at which it was served and appears in the cause title is the registered address of the company. In such view of the matter, we construe the service on respondent no. 1 also to be good service since

sufficient attempts have been made to serve at the last known registered office of the company, but the company is deliberately avoiding service.

4. Thus, the application is taken up for hearing ex parte since the respondents choose to remain absent.

5. In the present application for condonation of delay, it has been pleaded that the appellant took a decision in due time after dismissal of the suit for preferring an appeal against the same and accordingly, sought legal advice from the learned Advocate appearing for the appellant in the trial court. Upon a conference being fixed with a learned Advocate practising in this court, the memorandum of appeal was drawn up. However, before filing the same, a “pens down” called by the Bar Council of West Bengal commenced, which prevented the advocates from filing the appeal, since the infrastructure for filing such appeal was unavailable due to the said “pens down”.

6. Subsequently, the summer vacation intervened and at the earliest thereafter, the present appeal was filed.

7. Although cease works, strikes and pens downs (by whatever name called) by the Bar Associations/Bar Councils have been held to be illegal, seen from the perspective of the litigant, the litigant was not at fault for the appeal not having been filed in time.

8. Therefore, despite deprecating the practice of calling cease works in consonance with the judgments holding such strikes to be illegal, we find sufficient substance in the contention of the appellant that the appellant was not at all negligent; rather was diligent in pursuing its recourse, but was unable to file the appeal in time due to circumstances beyond the appellant's control.

9. Accordingly, we condone the delay in preferring the appeal.

10. Hence, CAN 1 of 2019 (Old No: CAN 7605 of 2019) is allowed ex parte, thereby condoning the delay in preferring FAT 350 of 2019.

11. The appeal be deemed to stand registered and admitted accordingly.

12. The appellant shall put in due requisites and postal costs for service of notice of appeal on the respondents within a week from date.

13. The trial court records shall be brought by special messenger at the cost of the appellant, also to be deposited within a week.

14. The appellant shall prepare and file the requisite number of paper books within eight weeks from the date of service of notice of arrival of the trial court records on the learned Advocate for the appellant.

15. Liberty to the parties to mention the appeal for inclusion in the list as and when the same is ready for hearing.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)