

D/L.6.
March 23, 2026.
MNS.

SAT No. 304 of 2014
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CAN 1 of 2014 (Old CAN 7381 of 2014)
+
CAN 3 of 2026

Sri Subir Kumar Barua and others
Vs.
Sri Hari Gobinda Jhunjuniwall and others

Mr. Tapan Kumar Mitra,
Mr. A. bhattacharjee,
Mr. S. Neogi,
Mr. Subhaditya Mukherjee

... for the appellants.

Mr. Arindam Banerjee, Sr. Adv.,
Mr. Trinath Ganguly

...for the respondents.

Re : CAN 3 of 2026 (modification)

1. The affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the appellants/petitioners submits that the person n charge of the litigation on behalf of the appellants was seriously ill during the relevant period, for which the occupation charges for the month of December, 2025 could not be paid in terms of the conditional order of stay passed by a co-ordinate Bench dated July 10, 2017.
3. Learned counsel also places reliance on the annexures to the application to substantiate such claim of ailment.

4. It is contended that since the deposit for the month of December, 2025 could not be made in the executing court, the subsequent payments were also not accepted by the said court. After the said person in charge for the appellants recovered somewhat, the present application has been filed in the month of February, 2026.

5. Learned senior counsel appearing for the respondents opposes the application and submits that in terms of the order dated July 10, 2017, the stay granted thereby stood automatically vacated on default in compliance of the condition mentioned therein.

6. Hence, it is submitted that there is no scope for modifying the said order, since it has already spent its force by the said order standing automatically vacated.

7. Moreover, it is argued that since the present application was not filed before the expiry of the due date for payment of the deposit for the month of December, 2025, that is, January 7, 2026, the present application ought not to be entertained.

8. Upon hearing learned counsel for the parties, we find that the annexures to the present application and its pleadings sufficiently substantiate the ailment of the person conducting the legal affairs on behalf the appellants during the relevant period.

9. Although we are aware of the rider in the order dated July 10, 2017, to the effect that in default of compliance of any of the conditions therein the stay would stand vacated, the present application has been filed for modification of

the said order itself and under the provisions of Sections 148 and 151 of the Code of Civil Procedure, which are also applicable to an appellate court by dint of Section 107 of the Code of Civil Procedure, the Court has power, under exceptional circumstances, to enlarge the time for complying with the directions of the Court even if the application is filed under compelling circumstances beyond the period of such expiry.

10. Thus, keeping in view of the circumstances of the case, this Court is of the opinion that exceptional circumstances have been made out to enlarge the time although the present application has been filed beyond the period stipulated in the parent order for complying with the Court's directions.

11. Accordingly, the order dated July 10, 2017 is modified to the limited extent that the deposits for the month of December, 2025, January, 2026 and February, 2026, are permitted to be deposited by the appellants by March 31, 2026.

12. If so deposited, the same will be deemed as sufficient compliance of the direction of deposit of occupation charges regarding the said months.

13. The current occupation charges for the month of March, 2026 shall be deposited by April 7, 2026 in terms of the order under modification and thereafter the current occupation charges shall be deposited within seventh day of each succeeding month.

14. It is made clear that in the event of default in making any of the above deposits, the order being passed now would stand automatically vacated without further reference to the Court.

15. Subject to such deposits being made, however, the stay order granted by the order dated July 10, 2017 is reimposed.

16. CAN 3 of 2026 is disposed of on contest in the light of the above observations without any order as to costs.

17. The parties, the executing court, and all concerned shall act on the basis of the server copy of this order, without insisting upon prior production of a certified copy thereof.

(Supratim Bhattacharya, J.) (Sabyasachi Bhattacharyya, J.)