

(2026) 08 CAL CK 1157
In the Calcutta High Court, Original Side
Case No : APOT/131/2026

Nupur Kejriwal

APPELLANT

Vs

Sunflower Synergies Private Limited And Ors.

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Code of Civil Procedure, 1908 — Order XXX Rule 4

Citation : (2026) 08 CAL CK 1157

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : For the Appellant : Mr. Debnath Ghosh, Sr. Adv. Mr. Sarosij Dasgupta, Adv. Ms. Mini Agarwal, Adv. For Respondent No. 1 : Mr. Soumabho Ghose, Adv. Mr. Aritra Basu, Adv. Mr. Biswajit Kumar, Adv. Mr. Aayush Lakhotia, Adv.

Final Decision : Disposed Of

Judgement

DEBANGSU BASAK, J.:-

1. Two applications and the appeal are taken up for hearing by consent of the parties.
2. GA/1/2026 is an application for condonation of delay, while GA/2/2026 is an application for grant of stay of the impugned order.
3. Department reports the delay of 186 days.
4. Delay is sought to be explained on the ground that, knowledge of the impugned order was derived after the writ of summons of the suit was served upon the appellant. Immediately thereafter, appellant instructed the Advocate to take appropriate steps. Time was consumed by the learned Advocate to file the appeal.
5. Purely on the principle that, the latches, if any, of an Advocate should not visit the litigant and on the ground that, if a plausible explanation is offered

explaining the delay, the same should be accepted, we deem it appropriate to condone the delay in making and filing the appeal.

6. Appeal is directed against the order dated December 19, 2025.

7. By the impugned order, learned Trial Judge, substituted the deceased defendant no. 2 with the appellant as one of the heirs and legal representatives of the deceased defendant no. 2.

8. Learned Senior Advocate appearing for the appellant submits that, the appellant is the married daughter of the deceased defendant no. 2. He submits that, no notice of the application for substitution was served upon the appellant. Moreover, the appellant cannot be added as a party defendant in a suit in respect of a partnership firm. In support of such contention, he relies upon Order XXX Rule 4 of the Code of Civil Procedure, 1908 and **2024 SCC Online SC 504 (Annapurna B. Uppin and Others Vs. Malsiddappa and Another)**.

9. Learned Senior Advocate appearing for the appellant submits that, the appellant relinquished her share in the partnership firm. Reconstitution of the partnership firm did not occur for the appellant to be roped in to the suit. He submits that, an opportunity of hearing should be afforded to the appellant.

10. Respondent/plaintiff is represented.

11. We find from the records that, the impugned order was passed without affording the appellant an opportunity of hearing.

12. Keeping all points raised by the parties in the appeal open, we deem it appropriate to set aside the impugned order so as to afford the appellant and other heirs and legal representatives an opportunity of hearing, prior to the application for substitution is decided.

13. In such circumstances, we set aside the impugned order dated December 19, 2025 and remand the application for substitution to be heard and decided by the learned Trial Judge.

14. Court is informed that, all substituted defendants were served with the writ of summons.

15. Respondent/plaintiff will serve a copy of the application for substitution upon the persons who are to be substituted in place and stead of the deceased defendant no. 2, save and except the appellant, since, the appellant stands served.

16. Let affidavit-in-opposition to the substitution application be filed within four weeks from date. Reply, if any, be filed within one week thereafter.

17. Learned Single Judge is requested to hear and decide the application for substitution as expeditiously as possible.

18. APOT/131/2026 along with connected applications are disposed of.

19. I agree.