

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
CRP No.07 of 2023

Sri Nirmal Sarkar and another

..... Petitioner(s)

V E R S U S

M/S ITP Limited

..... Respondent(s)

For Petitioner(s) : Mr. S.S. Debnath, Advocate.

For Respondent(s) : Mr. Somik Deb, Sr. Advocate,
Mr. P. Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

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21.12.2023

Heard Mr. S.S. Debnath, learned counsel appearing for the petitioners and Mr. Somik Deb, learned senior counsel assisted by Mr. P. Chakraborty, learned counsel appearing for the respondents.

The instant petition under Section 115 of the Civil Procedure Code (*CPC, for short*) arises out of the impugned order dated 11.03.2022 passed in Civil Misc No.07 of 2021 arising out of T.S.(Evic) No.25 of 2012 by the learned Civil Judge (Jr. Division), Dharmanagar, North Tripura whereby the learned trial Court has condoned the delay of 1 year 9 months and 7 days in restoration of the title suit in favour of the plaintiff/respondent herein.

Mr. S.S. Debnath, learned counsel for the petitioners has assailed it largely on two counts. (i) That this is the 3rd restoration of the suit after it was dismissed and restored on two previous occasions. Therefore, plaintiff is not diligent and such recurrent lapses of the plaintiff should not have been condoned; (ii) it is submitted that the plaintiff/respondent has not offered

sufficient explanation for condonation of inordinate delay of 1 year 9 months and 7 days. The learned trial Court has failed to record its satisfaction that the explanation was sufficient to condone the delay. Therefore, the petition may be allowed by setting aside the impugned order. It is also informed that after restoration of the suit, the trial is underway for more than 1 year and 9 months.

Mr. Somik Deb, learned senior counsel for the respondent has at the outset taken the plea of maintainability of this revision petition under Section 115 of CPC. He submits that it is not a case where the learned trial Court lacked jurisdiction in entertaining the prayer for condonation of delay and restoration of the suit under Order IX of CPC. If the decision of the learned trial Court falls within its jurisdiction then the impugned decision is not amenable to revision before this Court under Section 115 of CPC. He relies upon the decision of the Apex Court in case of *Manindra land and building corporation versus Bhutnath Banerjee and others* reported in *AIR 1964 SC 1336* paragraphs 5 to 10 & 15 in order to submit that question of limitation is a jurisdictional issue and finding of fact based thereon need not be interfered in revisional jurisdiction. Learned senior counsel also relies upon the celebrated decision in case of *Anisminic Ltd. versus the Foreign Compensation Commission and another* of the House of Lords reported in *(1969) 1 All ER 208*. He submits that error going to jurisdiction is distinguished from error within jurisdiction. Learned senior counsel for the respondents has also placed reliance upon the decision of the Apex Court in case of *Davinder Pal Sehgal and another versus Partap Steel Rolling Mills Pvt. Ltd. and others* reported in *(2002) 3 SCC 156* to dispel the plea raised upon the earlier two dismissals of the suit and its restoration. It is submitted that the restoration of the suit on the

instant occasion has to be decided on independent consideration within being influenced by the restoration of the suit on the earlier two occasions which the learned trial Court had restored on being satisfied with sufficient explanation by the plaintiff. It is submitted that the plaintiff had sufficient explanation for the delay seeking restoration of the suit. The order does not suffer from any perversity warranting interference on those counts also. It is further submitted that the trial is at an advanced stage and it would be proper if the suit is allowed to be decided on merits between the parties.

He submits that the plaintiff had dutifully explained to the trial Court that the authorized officer in the plaintiff-company had left the office and there was a gap between the new engagement of another counsel by the company. Plaintiff later authorized one Mr. Prabir De to look after the proper conduct of the suit on behalf of the company and accordingly new lawyer was engaged. Delay was not intentional. It was due to communication gap and retirement and leaving of employee from the garden and as such, the delay in filing restoration application after 1 year 9 months and 7 days was properly explained. The plaintiff was not inactive or negligent. He submits that the learned trial Court has also recorded due consideration to the provisions of Section 5 of the Limitation Act, 1963 and Article 122 thereof which prescribe the period for filing restoration petition. It is submitted that the learned trial Court also took into consideration the decision of the Apex Court in case of *Collector (LA) versus Katiji*, reported in (1987) 2 SCC 107 and observed that in matters of condonation of delay a pedantic approach is not required to be taken since if every day's delay has to be explained then why not every hour's delay and every second's delay? Doctrine must be applied in a rational common sense pragmatic manner. In the aforesaid background, learned senior counsel

for the respondents submits that the impugned order does not suffer from any jurisdictional error or perversity calling for interference by this Court in exercise of revisional jurisdiction under Section 115 of the CPC.

On consideration of the rival submissions of the parties and on going through the relevant pleadings placed from records and the decisions cited by the learned senior counsel for the respondents, the question which is thrown up is whether the exercise of power by the learned trial Court in condoning the delay of 1 year 9 months and 7 days suffered from jurisdictional error or was bordering on perversity. It can't be questioned that the learned Trial Court had the jurisdiction to decide the issue of delay on an application for condonation of delay under Section 5 of the Limitation Act, for restoration of a suit under Order IX, Rule 9. As such, the impugned order does not suffer from lack of jurisdiction. It is also true that whether the delay was condonable dependent upon the explanation furnished by the defaulting party. This question falls within the jurisdiction of the learned trial Court. It then has to be seen whether such exercise of jurisdiction was bordering on perversity and whether no explanation whatsoever was furnished by the plaintiff or not. The learned trial Court has on application of mind found the explanation to be cogent and sufficient. This Court, therefore, should not substitute its opinion on the explanation placed by the plaintiff if the order is not suffering from perversity. It also goes without saying that restoration of the suit on previous two occasions could not have weighed upon the learned trial Court to refuse to condone the delay if the plaintiff has shown valid reasons for restoration of the suit and for condonation of delay at this instance. For all these reasons, therefore, I do not feel inclined to interfere in the order. The trial has now

progressed to an advanced stage. However, this Court also finds that the learned trial Court has failed to award any cost in favour of the defendant/petitioner herein. This Court, therefore, deems it proper to impose a cost of Rs.11,000/- to be paid to the defendant on the next date fixed before the learned trial Court. The suit is of the year 2012, therefore learned trial Court shall endeavour to dispose it of within a period of 3 months from the date of receipt of copy of this order. Let the order be communicated to the learned trial Court. Parties are expected to cooperate and not seek any adjournments.

Accordingly, revision petition is disposed of. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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