

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.20/2023

Srimati Mira Debnath, daughter of Lt. Sridam Debnath, a resident of Village-Paschim (West) Jalefa, Post Office-Sabroom, and District-South Tripura.

.....Revision Petitioner(s).

V E R S U S

Sri Kanulal Debnath, son of Lt. Sridam Debnath, a resident of Village-Paschim (West) Jalefa, Post Office and Police Station-Sabroom, and District-South Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. A. Dasgupta, Advocate.

For Respondent(s) : Mr. D.K. Daschoudhury, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **09th August, 2023.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

Heard Mr. A. Dasgupta, learned counsel for the petitioner and Mr. D.K. Daschoudhury, learned counsel appearing for the respondent.

2. By the impugned order dated 10.02.2023, the learned Court of Additional District Judge, South Tripura, Sabroom has allowed the application under Section 5 of the Limitation Act, 1963 read with order XLI Rule 3A of the Code of Civil Procedure (CPC, for short) by condoning 448 days of delay in filing restoration application for restoration of the Title Appeal bearing No.12 of 2019 which was dismissed for default vide order dated 08.03.2021 passed by the learned District Judge, South Tripura.

3. Petitioner has taken a plea that Title Suit No.02 of 2014 preferred by the petitioner for declaration of right, title and interest over the scheduled

suit property and for recovery of possession was decreed on contest on 29.01.2019 in her favour. The respondent preferred an appeal which was dismissed on 08.03.2021. Petitioner put the decree in execution under Order XXI Rule 11 read with Rule 35 of the CPC. Respondent was asked to show-cause as to why the petitioner should not be put in possession of the suit land with the assistance of the Court. He entered appearance through Vakalatnama and filed objection. After exhausting all formalities, a Surveyor was appointed under Order XXVI Rule 18A of the CPC. Thereafter, the warrant of delivery of possession was issued directing the Bailiff to put the decree-holder in possession of the suit land. Thereafter, the respondent has preferred an application under Order XLI Rule 19 of the CPC for restoration of the said appeal after a delay of 449 days. It is submitted that the grounds taken by the respondent are false and as such, the impugned order suffers from manifest errors. During the said period, the respondent was attending the proceedings of the Executing Court for 3(three) days. As such, the impugned order may be set aside.

4. Learned counsel for the respondent has supported the impugned order. It is submitted that the Title Appeal was dismissed during the second wave of the COVID, 2020. The learned Court has taken note of the directions passed by the Apex Court in *Suo Motu Writ Petition(C) No.03 of 2020* suspending the period of limitation during the COVID period. The learned appellate Court took into consideration the explanation submitted by the applicant/appellant due to his health complication and financial hardship owing to the impact of the COVID-19 pandemic. Considering the ratio of the decisions cited by the parties and the law laid down by the Apex Court in

matters of interpretation of Section 5 of the Limitation Act, he took a lenient and liberal view and condoned the delay as being not intentional so that the appeal can be heard on merits.

5. It appears that the restoration application was filed on 29.06.2022, i.e. only after one month of the extended period of limitation came to expire as per the order dated 10.01.2022 passed by the Apex Court in *Suo Motu Writ Petition(C) No.03 of 2020* whereby the Apex Court had extended the period of limitation for a further period of 90 days beyond 28.02.2022 which would expire on 28.05.2022. It seems that the learned appellate Court has not taken into note the final order dated 10.01.2022 passed by the Apex Court regarding extension of time limit for preferring appeal etc. due to Covid pandemic. As such, it appears that there is not much delay after 28.05.2022 since as per the dates of events indicated by the petitioner himself the restoration and condonation application No.03 of 2022 was filed on 29.06.2022, i.e. about 31 days after that. As such, this Court does not find any perversity in the order allowing condonation of delay in seeking restoration of the appeal. The appeal is said to be pending adjudication. As such, this Court is of the view that no interference is called for in the matter.

6. The instant petition is dismissed.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

PULAK BANIK Date: 2023.08.10
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