

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.31 of 2022

Smti. Tripti Debi (Bhattacharyya)

W/O- Sri Swapan Kumar Bhattacharyya,

House No.77, Jagannath Bari Road, Near Old R.M.S. Chowmohani, P.S-
West Agartala, P.O-Agartala, Dist.- West Tripura

---Plaintiff-Appellant

Versus

1. The State of Tripura

represented by Secretary, Land and Revenue Department
Government of Tripura, Agartala.

2. The District Magistrate & Collector,

West Tripura, Agartala, Government of Tripura, Agartala

3. The Chief Executive Officer

Agartala Municipal Council Agartala, West Tripura

4.(a) Smti. Gitanjali Das

W/O- Sri Chitta Ranjan Das

D/O- Late Hemalata Das

357/8 Prince Anwar Shah Road Kolkata, West Bengal, Pin- 700045

4.(b) Sri Bidyut Kumar Das (Now Deceased)

S/O Late Hemalata Das

4.(c) Biplab Kumar Das

S/O- Late Hemalata Das

S.L No. 4 (b) & (c) both of 86 Jagannat Bari Road,
Near Old R.M.S. Chowmohani, P.S- West Agartala,
P.O- Agartala, Dist- West Tripura, Pin-799001

4.(d) Sri Biswajit Das

S/O- Late Hemalata Das of 862, Balinese Avenue,
Hendesson NV 89015, U.S.A

(Notice to be served through the Ministry of Law and Justice, Department
of legal affairs, Government of India, Shastri Bhawan, New Delhi, Pin-
110001.

4(e) Smti. Bithi Das (Podder)

W/O- Late Hiranmoy Podder

D/O- Late Hemalata Das

Block D.F, Type-II, Flat No.B-3/1

1582/1 Rajdanga Main Road, Kolkata-107, West Bengal, Pin- 700107

5. Smti. Madhumita Choudhury (Das)

W/O- Sri Bidyut Kumar Das

5(a) Miss Debarati Das (substituted against 4(b))

D/O- Late Bidyut Kumar Das

5(b) Sri. Bishal Das (substituted against 4(b)

S/O- Late Bidyut Kumar Das.

6. Smti. Anamika Das (Paul)

W/O- Sri Biplab Kumar Das

All are of 86 Jagannath Bari Road,
near old R.M.S. Chowmohani, P.S- West Agartala,
P.O- Agartala, Dist- West Tripura, Pin-799001

---Defendant-Respondents

For the Appellant(s) : Mr. A. Acharjee, Advocate

For the Respondent(s) : Mr. A. Bhaumik, Advocate

Mr. K. De, Addl. G.A.

Date of hearing & delivery
of Judgment & Order : **14.09.2023**

Whether fit for reporting : No

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Acharjee, learned counsel appearing for the plaintiff/appellant. Also heard Mr. A. Bhaumik, learned counsel appearing for the defendant/respondent no.3, AMC and Mr. K. De, learned Addl. G.A. appearing for the respondents-State.

2. Briefly stated, the plaintiff/appellant has filed the instant suit for declaration of right, title and interest over the suit property. After consideration of the pleadings and evidences on record, learned trial judge decreed the suit in the manner as under:-

“It is ordered and decreed that

In the result, the suit stands decreed partly on contest without cost.

Right title interest of the plaintiff stand declared over the A schedule land.

The relief as to recovery of possession of B schedule land and mandatory injunction and also the relief as to right of the plaintiff to use the D schedule land stands denied.

Prepare decree.

Accordingly, this case is stands disposed of on contest.

Pronounced.”

2.1. Thereafter, the defendant had preferred a first appeal under Section 96 of the Code of Civil Procedure, 1908 before the court of learned Addl. District Judge, West Tripura, Agartala. The title appeal had been registered as Title Appeal No.28 of 2018.

2.2. In preferring the said appeal, a delay of 8 months 13 days had been caused. The first appellate court on hearing the application for condonation of delay, came to a finding that the defendant/appellant had failed to explain sufficient cause for causing delay of 8 months 13 days in preferring appeal. By order dated 31.03.2022, the appellate court dismissed the application for condonation of delay. Hence this second appeal before this Court.

3. Mr. Acharjee, learned counsel for the plaintiff/appellant has submitted that the findings of the learned first appellate court rejecting the prayer for condonation of delay is perverse.

4. At the time of admission of this second appeal, following substantial question of law had been formulated by this Court:-

“Whether the findings arrived at by the learned Additional District Judge, Court No.4, West Tripura, Agartala while rejecting the petition for condonation of delay are perverse?”

5. In view of the aforesaid substantial question of law, I deem it fit to peruse the order dated 31.03.2022 passed by learned first appellate court. Learned first appellate court in his order dated 31.03.2022 had observed thus:-

“It is settled law that delay must be explained on day to day basis, but it must not be based on more pedantic

technicalities. However, it is the duty of the appellant to show sufficient cause for not preferring the appeal in time.

In the present case, in para No.2 of the condonation petition it is stated by the appellant-petitioner that the appeal ought to have been filed within 30 days from the date of judgment but could not be filed in time and ultimately it was filed on 21.8.2018 and so there was a delay for a period of 8 months 12 days in preferring the appeal and prayed before this Court to condone the delay allowing the petition. So, in this para this Court finds no ground which prevented the appellant-petitioner in preferring the appeal.”

6. In para no.6 also the plaintiff/appellant stated as regards the cause for delay in preferring the appeal, but there was no explanation, why the delay was caused.

7. Mr. Acharjee, learned counsel for the plaintiff/appellant has tried to persuade this Court that during the pendency of the trial before the learned trial court, the plaintiff/appellant preferred an application under Article 227 of the Constitution of India before High Court against the order passed by the learned trial judge. However, during the pendency of the application under Article 227 of the Constitution of India, the learned trial judge proceeded with the suit and ultimately evidence was recorded and after hearing the learned counsel appearing for the parties, judgment and decree was passed. This fact also has been revealed from the application for condonation of delay. In this regard, learned first appellate court had observed that there was no relation between the pendency of the application filed by the petitioner/appellant under Article 227 of the Constitution of India before the High Court. Learned first appellate Court had further observed that the petitioner/appellant ought to have filed the appeal within 30 days from the date of the judgment and decree and if he failed to prefer the appeal within the statutory period of 30 days, then, he must justify sufficient

cause, which prevented him in preferring the appeal within the statutory period.

8. Mr. Acharjee, learned counsel for the plaintiff/appellant has submitted that the appellant applied for certified copy of the judgment and decree passed by the learned trial judge after 30 days. Though in the application for condonation of delay filed before the first appellate court, the said fact has not been mentioned, however, it is evident from the submission of learned counsel for the plaintiff/appellant that he applied for certified copy of the judgment and decree after 30 days.

9. If that be so, it is the obligation of the plaintiff/appellant to explain what prevented him to submit application for obtaining the certified copy of the judgment and decree just after the judgment and decree was passed by the learned trial court. There is no explanation in this regard.

10. In considering the petition for condonation of delay, the courts always seem to be liberal, but, in the opinion of this Court, there must be some explanation which at least can justify that there was sufficient cause in not preferring the appeal within statutory period of limitation. The appellant has failed to justify any reason what prevented him to apply for the certified copy of the judgment and decree before 30 days and under what circumstances the delay of 8 months 13 days had been caused in preferring the first appeal before the first appellate court.

11. I do not find any error in the findings of learned first appellate court that pendency of the application under Article 227 of Constitution of India could be a ground not to prefer appeal within the statutory period of limitation. It is submitted that the appellant had no idea about law. It is settled that ignorance of law cannot be the excuse to proceed in accordance with law.

12. In the light of above observations and discussions, I do not find any perversity in the order of the learned first appellate court rejecting the petition for condonation of delay filed by the plaintiff/appellant. Accordingly, the present second appeal stands dismissed.

Send down the LCRs.

SANJAY
GHOSH

Digitally signed
by SANJAY
GHOSH
Date: 2023.09.26
16:07:22 +05'30'

Rohit

JUDGE



सत्यमेव जयते