

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
CRP No.23 of 2024

Sri Chanu Miah

..... *Petitioner(s)*

V E R S U S

Safik Mia and others

..... *Respondent(s)*

For Petitioner(s) : Mr. Ratan Datta, Advocate.

For Respondent(s) : Mr. S. Noatia, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

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03/05/2024

Heard Mr. Ratan Datta, learned counsel appearing for the petitioner and also heard Mr. S. Noatia, who has entered appearance on behalf of all the respondents upon service of notice.

This Court by order dated 22.03.2024 observed as follows:

“Petitioner is the defendant in TS(P) No.38 of 2017 which was disposed of vide judgment and decree dated 14.06.2018. Being aggrieved by the said judgment, the defendant preferred an appeal bearing T.A No.17 of 2028 before the learned District Judge, North Tripura, Dharmanagar. The said appeal was dismissed for default on 05.06.2023. The restoration application with an application for condonation for delay of 99 days with supporting medical documents has been rejected by the impugned order dated 19.01.2024. Learned counsel for the petitioner submits that though the delay is properly explained but the learned Court refused to condone the delay.”

Learned counsel for the petitioner submits that despite due explanation for the delay of 175 days, the restoration application has been dismissed on grounds of limitation preventing proper adjudication on merits of the appeal. It is further submitted that respondents had not filed any written objection to the delay condonation application. The appellant was ill

and undergoing treatment for a long time. Therefore, there was some delay in filing the restoration petition. As such, delay may be condoned.

Learned counsel for the respondents has opposed the prayer.

I have considered the submissions of learned counsel for the parties and taken note of the pleadings placed from record. The appellant/petitioner has in his application for restoration of title appeal specifically stated that he being an employee of a private sector had gone to Bangaluru. During that period, his engaged counsel could not appear before the learned Court. As a result of which the appeal was dismissed on 05.06.2023 for default. When he returned from Bangaluru on 14.06.2023 he was faced with serious ailments i.e. fever, jaundice and liver cirrhosis for which he remained under treatment from 15.06.2023 to 18.10.2023. He was advised bed rest. Thereafter, he approached the newly appointed advocate, obtained the certified copy of the order and filed the appeal. He has taken a plea that in the meantime puja vacation also intervened. As such, though the delay may apparently be large but effectively it has been properly explained on account of his medical treatment.

On consideration of the submission of learned counsel for the petitioner and the respondents and after going through the explanation urged, it appears that the petitioner has given sufficient explanation for the delay in preferring the restoration application. It further appears that due to non-representation for several dates on behalf of his learned counsel, the appeal was dismissed. The appellant being employed in a private job had to go

outside and after return he has taken diligent steps but unfortunately fell ill. In order that the appeal is decided on merit, interest of justice would be better served if the petition is allowed and delay in preferring the restoration petition is condoned.

Accordingly, impugned order dated 19.01.2024 passed by the learned District Judge, North Tripura, Dharmanagar in Civil Misc.(Condonation) 54 of 2023 and Civil Misc.(Restoration) 02 of 2023 (Annexure-6) are set aside. Let the appeal be heard on merits.

As such, the instant petition stands disposed of.

(APARESH KUMAR SINGH) CJ

SIDDHARTHA LODH

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