

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.62 of 2024

Smt. Soma Das, W/O Sri Subrata Das, resident of Purba Laxmibill, P.O.-
Purba Laxmibill, P.S.- Bishalgarh, District- Sepahijala Tripura.

..... Petitioner (s).

Versus

Sri. Indrajit Debnath, S/O. Lt. Motilal Debnath, Resident of Vill- Charilam,
P.O.- Charilam, P.S.- Bishalgarh, District- Sepahijala Tripura.

..... Respondent(s).

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

For Respondent(s) : Mr. Nitai Chaudhuri, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

ORDER

03/10//2024

Heard Mr. S. Sarkar, learned counsel together with Mr. D. Debnath, learned counsel for the petitioner and Mr. Nitai Chaudhuri, learned counsel for the respondent.

[2] By the impugned order dated 10.04.2024 passed in Civil Misc. (Condo) 02/2023, the learned Civil Judge (Sr. Division), Sepahijala, Sonamura, has refused to condone the delay of 406 days in seeking restoration of Title Suit No. 160/2017 which was dismissed for default on 19.02.2022. Upon notice, respondent has appeared through learned counsel, Mr. Nitai Chaudhuri.

[3] Learned counsel for the plaintiff/petitioner submits that the suit was initially transferred from West Tripura District to Sepahijala District on account of territorial jurisdiction. Thereafter, the sole plaintiff/petitioner who is a lady had to engage a new counsel before the learned Sepahijala District

Court for conducting the case. He submits that the plaintiff/petitioner came to know about the dismissal of the suit only upon information supplied by the advocate clerk on 20.12.2022. Thereafter, immediately she applied for obtaining certified copy of the order of dismissal. The application for restoration was filed on 10.05.2023 after due consultation with the new counsel. Plaintiff/petitioner was not well and undergoing treatment by a homeopathic doctor. The learned trial Court has, however, been persuaded by the fact that the status of cases can easily be found out from the website under the e-courts project. Therefore, it was incomprehensible as to how more than a period of one year i.e. 406 days was consumed in collecting the certified copy of the impugned order, communicating with an advocate and filing of the restoration petition with delay condonation application. However, the learned trial Court has not taken into consideration that the plaintiff/petitioner is a lady. She was not informed about the dismissal of the suit by the engaged counsel for ten months and she was also undergoing prolonged treatment under a homeopathic doctor. There is no deliberate delay in seeking restoration of the suit which has been filed for cancellation of a fraudulent sale deed with the sole defendant/respondent. Therefore, the impugned order may be set aside and the suit may be restored to its original file.

[4] Mr. Nitai Chaudhuri, learned counsel for the defendant/respondent has strongly opposed the prayer. He has drawn the attention of this Court to the order of dismissal dated 19.02.2022. He submits that the suit was not dismissed for non appearance on that particular date but for the last seven months on four consecutive dates the plaintiff/petitioner was

un-represented and no steps were being taken either. It is further submitted that the grounds of medical treatment being made out by the plaintiff/petitioner is also not worth believing since she was not suffering from any serious illness rather undergoing homeopathic treatment. The plaintiff/petitioner is well educated lady and, moreover, there is no error in the impugned order to be required correction by this Court.

[5] On consideration of the rival submissions of the learned counsel for the parties and the materials placed form record and on perusal of the impugned order, I am of the considered view that the learned trial Court has not committed any error of jurisdiction or failure to take into account relevant facts and grounds raised by the plaintiff/petitioner in refusing to condone the inordinate delay of 406 days in seeking restoration of the suit. From perusal of the order of dismissal dated 19.02.2022, it also appears that the dismissal took place not on account of non appearance on one day but the plaintiff/petitioner remained unrepresented consecutively since 30.07.2021 on three consecutive dates. As such, for five consecutive dates nobody appeared on behalf of the plaintiff/petitioner. Moreover, the explanation given by the plaintiff/petitioner that she came to know of the dismissal of the suit only on 20.12.2022 upon information being supplied by the advocate clerk also does not appears to be convincing since the suit had remained unattended for seven months prior to the dismissal on 19.02.2022 and it is not ordinarily expected for a litigant to not pursue a lis or a cause which has been instituted with any serious purpose. The learned trial Court has taken into note the principles laid down by the Apex Court in this regard and also absence of any sufficient cause to condone the delay under Section 5 of the Limitation Act, 1963. For all the above

reasons, I, therefore, do not find any error in the impugned order requiring interference under Article 227 of the Constitution of India.

[6] Accordingly, the instant petition is dismissed. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ

