

GAHC010038812023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/24/2023

M/S RUDRESWAR CONSTRUCTION PVT. LTD.
A PRIVATE LIMITED COMPANY BEING REGISTERED UNDER THE INDIAN
COMPANIES ACT HAVING ITS REGISTERED OFFICE AT REHANA
MANSION, FIRST FLOOR, RATAN DEWAN ROAD, ULUBARI, GUWAHATI- 7,
DIST.- KAMRUP (M), ASSAM, REPRESENTED BY ITS DIRECTOR RANJANA
GHOSAL, W/O ASHIM GHOSAL, R/O BHANGAGARH, DINESH OJAH PATH,
GUWAHATI- 5, DIST.- KAMRUP (M), ASSAM.

VERSUS

MITA GHOSH
W/O SOMNATH GHOSH,
R/O JAGABANDHU APARTMENTS, 5TH FLOOR, P.O.- GMCH, P.S-
BHANGAGARH, GUWAHATI, DIST.- KAMRUP (M), ASSAM.

Advocate for the Petitioner : MR. S P CHOUDHURY

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

08.02.2024

Heard Mr. S. P. Choudhury, learned counsel for the petitioner.

None appears for the respondent though notice was duly served upon her.

This is an application under Section 115 read with section 151 of the Code of Civil Procedure challenging the order dated 09.01.2023 passed by the learned

Additional District Judge No. 2, Kamrup (M) at Guwahati in Misc.(J) Case No. 67/2022 arising out of Title Appeal No. 01/2022.

The present petitioner filed Title Suit No. 417/2017 against the present respondent. On 19.08.2019, the said case was posted for hearing for argument. Respondent being the defendant remained absent and therefore the suit was posted on 17.09.2019 for delivery of judgment. Ultimately, the judgment was delivered on that day.

Thereafter, the respondent filed an appeal being Title Appeal No. 01/2022, that too after 181 days of delay. Therefore, the respondent filed an application under Section 5 of the Limitation Act for condoning delay. The appellate court condoned the delay and admitted the appeal. Hence, the said order of condonation of delay is under challenge in this revision petition.

In the aforesaid petition under Section 5 of the Limitation Act the respondent claimed that she was suffering from certain ailment and for that matter, she could not contact her lawyer and that is the reason why the lawyer remained absent in the court proceeding. The respondent also submitted that because of Covid-19, she was prevented from contacting her lawyer. Respondent has further stated that she came to know about the decree only on 03.01.2022 when court official visited the suit premises with a writ for delivery of possession in connection with Title Execution Case No. 25/2020. Thereafter, respondent contacted her lawyer.

Mr. Choudhury submitted that the delay is not 151 days, but it is about 900 days. According to Mr. Choudhury, the conduct of the respondent was bad in the trial court also.

Today, I have decided to agree with Mr. Choudhury because even after publication of the notice in the newspaper the respondent failed to appear and contest the case. I have also decided to agree with Mr. Choudhury that the learned appellate court did not appreciate the facts in proper perspective.

Ordinarily, a litigant does not stand to benefit by lodging an appellate. But in this case, the documents available in the record do not show that the respondent had

showed medical documents in support of her case. The conduct of the respondent is not good at all in the trial court also. These facts are not considered by the appellate court.

For the aforesaid reason, I find that the impugned order dated 09.01.2023 passed by the learned Additional District Judge No. 2, Kamrup (M) at Guwahati in Misc. (J) Case No. 67/2022 arising out of Title Appeal No. 01/2022 is bad in law and stands set aside accordingly. Consequently, the connected Title Appeal No. 01/2022 stands dismissed.

The revision petition is disposed of.

JUDGE

Comparing Assistant