

IN THE HIGH COURT OF TRIPURA
AGARTALA

R.S.A. No. 61 of 2009

Shri Anil Majumder,
son of late Anath Bandhu Majumder
Vill- South Nalchar, Kukrania, P.S.
Melaghar, Sub-Division-Sonamura,
District- West Tripura

..... **Appellant**

- V e r s u s -

- 1. The State of Tripura,**
represented by the Secretary- Cum-
Commissioner, Department of
Education, Government of Tripura,
Agartala
- 2. The Director of School Education,**
Government of Tripura, Agartala
- 3. The Head Master,**
Kukrania J.B. School, Tel-Kajla,
P.S. Melaghar, District- West
Tripura
- 4. The Chairman,**
Rubber Board, Head office,
Kottayam, Kerala, PIN 686001
- 5. The Branch Manager,**
National Insurance Company Ltd.,
Agartala, Akhaura Road, West
Tripura.

..... **Respondents**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant	:	Mr. S.M. Chakraborty, Sr. Advocate Ms. B. Chakraborty, Advocate				
For the respondents	:	Mr. D.K. Biswas, Mr. G.S. Bhattacharji and Mr. S. Kar, Bhowmik, Advocates.				
Date of hearing and delivery of Judgment & Order	:	10.04.2015				
Whether fit for reporting	:	<table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="padding: 2px 10px;">YES</td><td style="padding: 2px 10px;">NO</td></tr><tr><td style="padding: 2px 10px;"></td><td style="padding: 2px 10px; text-align: center;">√</td></tr></table>	YES	NO		√
YES	NO					
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JUDGMENT & ORDER (ORAL)

Heard Mr. S.M. Chakraborty, learned senior counsel assisted by Ms. B. Chakraborty, learned counsel vice Mr. K. Roy, learned counsel appearing for the appellant as well as Mr. D.K. Biswas, learned counsel appearing for the respondent No.5, Mr. G.S. Bhattacharji, learned counsel appearing for the respondents No.1,2 & 3 and Mr. S. Kar Bhowmik, learned counsel appearing for the respondent No.4.

[2] This is an appeal under Section 100 of the C.P.C. challenging the order dated 26.08.2009 delivered in Misc.02 of 2009 arising from Title Appeal No. 02 of 2009 as well as against the order dated 26.08.2009 delivered in Title Appeal No.02 of 2009 by dismissing the appeal as consequence of the order 26.08.2009 passed in Misc.02 of 2009.

[3] At the time of admitting this appeal by the order dated 10.02.2012, the following substantial questions of law were formulated:

(i) Whether the earlier possession of the vendor of the appellant is required to be taken into account while calculating the length of possession in favour of the successive possessor in determining the adverse possession of the subsequent possessor?

(ii) Whether the starting date of possession is necessary to be pleaded and proved in a case where adverse possession is found to be established for a period more than the statutory period?

(iii) Whether the Court below committed error by refusing to accept the ground that the delay was

caused due to fault on the part of the engaged counsel?

[4] This Court has taken the substantial question No.3 first for consideration as it relates to the rejection of the causes as assigned for condonation of delay of 52 days in preferring an appeal against the judgment and decree respectively dated 02.02.2009 and 12.02.2009 delivered in Title Suit No.20 of 2004 by the Civil Judge, Jr. Division, Sonamura, West Tripura.

[5] The brief fact is that the appellant filed the suit for declaration of title, confirmation of possession and perpetual injunction in the court of the Civil Judge, Jr. Division, Sonamura, West Tripura. The defendants, the respondents No.1,2 and 3 herein, contested the suit by filing the written statement challenging the pleadings therein. However, by the judgment dated 02.02.2009, the suit was dismissed.

[7] Being aggrieved by the said judgment dated 02.02.2009, the appellant presented an appeal under Section 96 of the C.P.C. along with an application for condonation of delay under Section 5 of the Limitation Act as there was delay of 52 days in presenting the said appeal which has been registered as Title Appeal No.02 of 2009. In the said application for condonation of delay, being Misc. 02 of 2009, the causes as shown by the appellant for such delay is that while he was consulting with the engaged counsel namely, Koushik Roy, suddenly his father, the counsel's father,

expired and he was in bereavement and thereafter, he suffered from serious form of skin disease. As a result, there was a dislocation in collection of the certified copy of the judgment and decree and preparation of the memorandum of appeal along with the application for condoning the delay. Even they filed an application under Order XLI Rule 27 of the C.P.C. along with the appeal. By the order dated 26.08.2009 delivered in Misc. 02 of 2009, the first appellate court has observed that the delay has not been satisfactorily explained to show that the delay as caused was not for the laches and negligent of the plaintiff-appellant but for reasons beyond his control. It has been also observed that why the appellant did not engage another counsel for filing the appeal has not been explained. Finally, on observing that the grounds displayed by the appellant are do not constitute sufficient cause, the prayer for condoning the delay was rejected, on placing reliance on the decision of the apex court in **Collector, Land Acquisition Anantanag and another vs. Mst. Katiji and others**, reported in **AIR 1987 SC 1353**. It is well known that in that decision, the apex court has observed that in the matter of condoning the delay, no pedantic approach should be adopted by the court, the court must have to see at the substantive ends of the justice.

[8] On scrutiny of the impugned order dated 26.08.2009, it has also transpired that the first appellate court has observed as under:

In the present case, the grounds for condonation of delay put forward are the sad demise of the father of the Ld. Advocate, Mr. K. Roy and also his illness. The said demise of the father of the Ld. Advocate might be true. But in respect of illness no medical certificate, prescriptions have been displayed to substantiate the grounds of illness.

[9] In this perspective and considering the length of the delay, this Court is of the considered opinion that the first appellate court ought to have condoned the delay of 52 days in presenting the appeal. Accordingly, the impugned order dated 26.08.2009 delivered in Misc. 02 of 2009 is interfered with and set aside. The delay of 52 days in presenting the appeal against the judgment and decree respectively dated 02.02.2009 and 12.02.2009 delivered in Title Suit No.20 of 2009 by the Civil Judge, Jr. Division, Sonamura, West Tripura is hereby condoned. Consequently, the order dated 26.08.2009 delivered in Title Appeal No.02 of 2009 is set aside and quashed. This Court will not make any observation on the other substantial questions of law as this Court remands hereby the appeal being Title Appeal No.02 of 2009 to be heard on merit by the first appellate court.

Accordingly, this appeal is allowed.

Prepare the decree accordingly.

Send down the LCRs thereafter.

JUDGE

Sujay