

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP NO.65 OF 2010

Sri Gouranga Debnath,
son of late Jagadish Debnath (Baishnab),
resident of Joykatpur, P.O. Joykatpur,
P.S. Belonia, District South Tripura.

..... Petitioner

– Vs –

1. Sri Biswajit Malakar,
son of late Lilu Malakar,
2. Smt. Kajal Malakar,
wife of Sri Mana Datta,
3. Smt. Bijali Malakar (Dey),
wife of Sri Sukhen Dey,
- all are residents of Joykatpur, P.O. Joykatpur,
P.S. Belonia, District South Tripura.

..... Respondents

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

For the petitioner : Mr. K.N. Bhattacharji, Sr. Advocate
Mr. D. Sarma, Advocate

For the respondents : Mr. P.K. Pal, Advocate

Date of hearing & order : 29.01.2015

Whether fit for reporting :

Yes	No
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JUDGMENT & ORDER (ORAL)

Heard Mr. K.N. Bhattacharji, learned senior
counsel, assisted by Mr. D. Sarma, learned counsel appearing
for the respondents.

2. At the outset, Mr. K.N. Bhattacharji, learned senior counsel appearing for the petitioner, at the outset, has submitted that though the petition made under Section 5 of the Limitation Act for condoning the delay for presenting an application under Order IX, Rule 13 of the CPC for setting aside the ex parte decree dated 25.11.2009 passed by the Civil Judge, Junior Division, Belonia, South Tripura, in Title Suit No.48/2009 has been rejected, but the said petition, accompanied with the petition for condonation of delay, under Order IX, Rule 13 of the CPC has not been dismissed, at least there is no such order in the record.

3. This petition filed under Article 227 of the Constitution of India is directed against the order dated 28.05.2010 delivered in Misc.Case No.05/2010 by the Civil Judge, Junior Division, Belonia, South Tripura.

4. There is no dispute that for filing the application for setting aside the ex parte decree dated 25.11.2009 delivered in Title Suit No.48/2009, the petitioner caused a delay of seventy days. The causes assigned for such delay are that the petitioner was seriously ill from 24.11.2009 to 31.01.2010. Even, in support of that illness the petitioner produced a certificate from the competent medical practitioner, but the Civil Judge, Junior Division, Belonia, South Tripura, has observed that from the records of Title Suit

No.48/2009, it appeared that the summons were received by the petitioner on 28.09.2009 and, he was allowed 90 days for filing the written statement. But, the petitioner did not submit the written statement. As consequence thereof, on 25.11.2009 when the petitioner sought further extension of time for filing the written statement, that prayer was rejected. According to the Civil Judge, the petitioner went to the doctor on 24.11.2009 for the first time, whereas the ex parte order was passed on 25.11.2009, but the petitioner in his petition dated 25.11.2009 did not enclose any copy of the medical prescription. It is evident from the said prescription that after 24.11.2009 the petitioner went to the doctor on 24.12.2009 and 22.01.2010 and he was advised to take bed rest. Thereafter, the Civil Judge has observed as under :

“The contents of the prescription does not reveal any serious illness which stopped the petitioner to appear before the Court to file the written statement within the stipulated period in the Title Suit and subsequently the prayer u/o IX R/13 of CPC within the limitation period. The petitioner in his prayer has stated that on 22.01.2010 he meet his Ld. Counsel and came to know about the exparte order. The above facts although reveals that the petitioner was not in touch with his Ld. Counsel for 70 days since the exparte order but it is difficult to assume that the petitioner remained ill for the entire 70 days and he was confined to bed.”

Having observed thus, the petition seeking condonation of delay of 70 days for presenting the

application under Order IX, Rule 13 of the CPC has been rejected.

5. Mr. K.N. Bhattacharji, learned senior counsel appearing for the petitioner, has submitted that the ex parte decree on the face of it is patently illegal. He has submitted that even the petitioner has not been afforded any opportunity to place his argument on the legal aspect.

6. Mr. P.K. Pal, learned counsel appearing for the respondents in his usual fairness has submitted that the court of the Civil Judge, Junior Division, Belonia, South Tripura, has taken a strict view for the conduct of the petitioner as recorded.

7. Having appreciated the rival submissions extended by the learned counsel for the parties, this court is of the view that the 'strict approach' as adopted by the Civil Judge, Junior Division, Belonia, South Tripura, cannot be held as appropriate in the context of the case.

8. Accordingly, the impugned order is set aside and the petition filed under Section 5 of the Limitation Act is allowed, subject to payment of ₹2,000 (rupees two thousand) to be paid to the respondents within a month from today. The petitioner shall submit the receipt, acknowledging payment of the said cost in the court of the Civil Judge, Junior Division,

Belonia, South Tripura on or before 20.02.2015 and, thereafter, the Civil Judge (Jr. Divn.), Belonia, South Tripura, shall hear the application filed by the petitioner under Order IX, Rule 13 of the CPC in accordance with law.

9. With this observation and direction, this petition stands allowed and disposed of.

JUDGE

ROY