

Party Name : SOMA BHOWMIK Vs GOBINDA SARKAR

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THE HONBLE MR JUSTICE U. B. SAHA THE HONBLE MR. JUSTICE S.TALAPATRA

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The instant application is filed by the appellant-applicant for condoning the delay of 515 days in preferring the appeal against the judgment dated 24.07.2013 in TS (Nullity) 341 of 2010 passed by the learned Judge, Family Court, Agartala, West Tripura wherein the learned Family Judge, after hearing the parties, dismissed the suit.

Heard Mr. Dasgupta, learned counsel for the appellant-applicant as well as Mr. Dutta, learned counsel for the respondent.

Mr. Dasgupta while urging for condonation of delay, as sought for, would relied upon some medical certificates issued by one Dr. S Saha, Medical Officer, TMC and Dr. BRAM Teaching Hospital wherein the doctor certified that the appellant-applicant was suffering from Asthma and also low blood pressure and Bronchal problems. According to Mr. Dasgupta, she could not file the appeal in time due to her illness.

On the other hand, the respondent filed an objection to the prayer for condonation of delay and contended that though the appellant-applicant was allegedly ill from 22.08.2013 to 21.12.2014, i.e. for about one year four months continuously whereas she attended the Court on 19.12.2014 to swear Affidavit. It is also contended that the Medical Officer in his certificate dated 20.10.2014 certified that the period of absence of from duty was from 20.10.2014 to 14.01.2015 whereas the appellant-applicant filed the appeal about on or about 19.12.2014, i.e. about one month prior to the restoration of her health. Therefore, the delay should not be condoned as the grounds taken in the petition are absolutely false.

We have gone through the impugned judgment wherein it is stated that the applicant herself in para 5 of her application stated that the respondent appeared before the Medical Board and again in para 8 of the said application stated that the respondent obtained the report by producing another person. These contentions of the applicant are self-contradictory. The learned trial court after taking note of all these facts and other evidences on record dismissed the suit.

There is no doubt that each and every day's delay may not be explained but there must be some reasonable explanation from which the Court can come to a conclusion that the applicant was unable to file the appeal within the period of limitation. More so, the diseases which are mentioned in the Medical Certificate are also, according to us, not of such nature which would prohibit the applicant from preferring appeal within time.

However, it would not be proper on our part to express any opinion regarding the impugned judgment but we are satisfied that the delay has not been properly explained and the same is also not satisfactory.

In view of the above, the instant CM Application is dismissed. No orders as to costs.