

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP No.73 of 2013

Shri Bijoy Debbarma,
son of late Surendra Chandra
Debbarma, resident of Ujan
Abhoynagar Bazar, East side,
P.O. Abhoynagar, P.S. East
Agartala, District – West Tripura

..... **Petitioner**

- V e r s u s -

Shri Kishore Debbarma,
son of late Subhachandra
Debbarma of village – Bhati
Fatikcherra, P.O. Kamalghat,
P.S. Lefunga, District – West
Tripura

..... **Respondent**

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

For the petitioner : Mr. D.C. Roy, Advocate
For the respondent : Mr. Suman Bhattacharji, Advocate.
Date of hearing and delivery : **01.04.2015**
of Judgment and order

Whether fit for reporting :

YES	NO
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. D.C. Roy, learned counsel appearing for the petitioner as well as Mr. Suman Bhattacharji, learned counsel appearing for the respondent.

[2] This is a petition filed under Section 115 of the C.P.C. questioning the legality of the order dated 21.06.2013 delivered in

Civil Misc.38 of 2013 arising out of Title Appeal No.14 of 2013 by the Additional District Judge, No.5, West Tripura, Agartala whereby the delay of 208 days in preferring the appeal has been condoned.

[3] The brief fact as is essential to understand the perspective of the challenge is that the petitioner herein instituted a suit for specific performance of the agreement to sale which has been entered between the petitioner and the respondent on 20.09.2007 (Exbt.1 series). Even the respondent herein received a sum of Rs.2,00,000/- (Rupees two lakhs) as advance as token of acceptance of the said agreement. According to the petitioner, the respondent did not perform his part by executing the sale deed on receiving the remainder of the consideration money despite his readiness as claimed. The petitioner instituted the suit for specific performance as stated. The said suit was decreed on 07.09.2011. The decree dated 07.09.2011 delivered in Title Suit No.81 of 2008 by the Civil Judge, Sr. Division, Agartala, West Tripura, No.1 was initially conceived by the respondent as *ex-parte* decree and on that premises, the respondent had approached the court of the Civil Judge, Sr. Division, West Tripura, Agartala, No.1 by filing a petition under Order IX Rule 13 of the C.P.C. for setting aside the *ex-parte* decree. But the Civil Judge, Sr. Division, West Tripura, Agartala, No.1 on observing that the decree has not been passed *ex-parte* as asserted, and as such, the said petition under Order IX Rule 13 of the C.P.C. cannot be maintained and accordingly, the petition was dismissed.

[4] On the basis of the finding as made, the respondent filed an appeal under Section 96 of the C.P.C. in the court of the District Judge, West Tripura, Agartala challenging the judgment and decree dated 07.09.2011 delivered in Title Suit No.81 of 2008 by the Civil Judge, Sr. Division, Agartala, West Tripura, No.1. The said appeal could not be filed within the period of limitation and hence, the respondent filed a miscellaneous application being Civil Misc. 38 of 2013 along with the said appeal. In the course of time, the said miscellaneous application along with the appeal was transferred to the court of the Additional District Judge, West Tripura, Agartala, No.5 and the matter was heard. By the impugned order dated 21.06.2013, the delay of 208 has been condoned observing that:

"Since the petitioner filed application under Or.IX r.13 CPC before the Court below thinking that his relief was there in making an application under that section and as ultimately the learned Court below held that relief of the petitioner was there in preferring the appeal, there is no doubt that the period spent i.e. 190 days in pursuing the application under Or.IX r.13 CPC shall be excluded as per Section 14 of the Limitation Act. Hence, the prayer for condonation of 208 days delay in preferring the appeal. It cannot be disputed that Courts are general liberal in dealing with condonation petition. First appeal is a vital stage of the suit for any party. In that view of the matter and considering the reason why the delay was occasioned as stated in detail in the petition, in my opinion for ends of justice the prayer needs to be allowed."

[5] Mr. D.C. Roy, learned counsel appearing for the petitioner has vehemently submitted that the explanations as provided by the respondent for the delay should have been discarded by the first appellate court inasmuch as those were not

correct according to the records as well as those are absolutely flimsy. Moreover, he has submitted that the right of the petitioner by that time got consolidated. It is the public policy that if the right by way of the judgment of a court gets consolidated and the challenge carried out subsequently if not supported by strong reasons and explanation, ordinarily the court will not entertain casual explanations for purpose of condoning the delay.

[6] From the other side, Mr. Suman Bhattacharji, learned counsel appearing for the respondents has submitted that from reading of the impugned judgment and decree questioned in the connected appeal, now pending for consideration in the first appellate court, it would be apparent that a serious substantial question of law is involved in the appeal. This Court cannot assess the appeal on merit in any manner, which falls in the domain of the first appellate court.

[7] After going through the records, this Court finds that there is no infirmity in the impugned order, even though a liberal approach has been adopted by the first appellate court. It has not been denied that the respondent approached the Civil Judge, Sr. Division, West Tripura, Agartala, No.1, the trial court by filing an application under Order IX Rule 13 of the C.P.C. for setting aside the *ex-parte* decree wrongly as the decree was not *ex-parte* and as such, it transpires on the face of record that the respondent approached the forum which was not competent to adjudicate or

[5]

consider the matter. Thus, the first appellate court has appropriately applied the provisions of Section 14 of the Limitation Act.

[8] Having regard to what has been stated hereinabove, this Court is of the view that there is no merit in this petition. Accordingly, it is dismissed. However, there shall be no order as to costs.

Before parting with the records, the first appellate court is requested to take endeavour for disposal of the appeal as expeditiously as feasible.

Send down the LCRs forthwith.

JUDGE

Sujay