

Party Name : HASI RANI DAS Vs ANJU MAJUMDER & ORS

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HONBLE THE CHIEF JUSTICE DEEPAK GUPTA THE HONBLE MR JUSTICE U. B. SAHA

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This is an application for condonation of delay filed by the petitioner.

Normally, this Court is very lenient in applications dealing with condonation of delay but the averments made in the petition are such that if the delay in this case is condoned, it would mean that the litigant will direct when and how his or her case should be taken up by the Court and the Court would have no control over the judicial proceedings.

The case of the petitioner is that she had filed the original suit in the Court of the Civil Judge (Sr. Division), Court No.2, West Tripura, Agartala on 20-03-2013. According to her, she resides in England along with her husband who is a British citizen and she comes to Tripura only during the winter months. Therefore, after filing the suit on 20-03-2013, she went back to England. She returned from England on 07-01-2014 and filed examination-in-chief by affidavit in the trial Court on 18-01-2014. The case was fixed for her cross-examination on 07-03-2014. On that date, the Presiding Officer was on leave and the case was adjourned. According to the petitioner, since she was to leave India to go back to England, she flew to Kolkata on 09-03-2014, and then went back to England. From England, a medical certificate dated 19-03-2014 was sent in which it was stated that the petitioner is a 70 year old lady suffering from Type 2 Diabetes Mellitus, Hypertension, Hip Osteoarthritis and Hypothyroidism. These are diseases which any 70 year old would suffer from and there is nothing which prevented her to come back to Agartala.

The petitioner did not come back to India to pursue the matter and it appears that one or two adjournments were given but finally the right to lead evidence was closed and the suit filed by the plaintiff was disposed of on 03-07-2014. Even thereafter the petitioner did not file the appeal immediately. She came back to India on 09-01-2015 and the appeal has been filed on 17-03-2015.

Assuming for the sake of argument that there was some reasonable ground not to appear before the trial Court, then also the appeal should have been filed immediately thereafter. The presence of a party is not necessary to file an appeal. The necessary papers could have been sent to England and could have been got back from England by speed post. Power of Attorneys can also be sent by speed post. Affidavits can be attested by the Notaries or the Magistrates in England also. There is not a word of explanation as to why nothing was done from 03-07-2014 till 09-01-2015 when the petitioner condescended to come back to India. Then she contacted her counsel and then also the appeal has been filed not immediately but on 17-03-2015. There is not a word in the application explaining why there is delay after 09-01-2015 till 17-03-2015.

No litigant can control the proceedings of the Court. Every litigant is expected to be vigilant about his or her rights. If the lady could not come to India, she could have appointed a power of attorney and authorized somebody to appear on her behalf but she could not expect that the Court will grant a date after one year when she returns to India. The litigant must appear on the date fixed by the Court and the Court cannot be expected to change its schedule to suit each and every litigant, otherwise no litigation will ever come to an end.

Therefore, we find no merit in the application which is accordingly dismissed.