

Party Name : UNION BANK OF INDIA Vs AJOY KR. SAHA & ORS

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THE HONBLE MR. JUSTICE S.C.DAS

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Heard learned counsel, Mr. A. Nandi for the appellant petitioner and learned counsel, Mr. D. Bhattacharji for the respondent-O.P. No. 1 and learned counsel, Mr. A.L. Saha for respondent-O. Ps No. 2 and 3.

By filing this petition under Section 5 of the Limitation Act, the petitioner prayed for condoning the delay of 215 days in preferring the connected RFA No. 5 of 2015.

It is contended by learned counsel, Mr. Nandi that the appellant-petitioner filed Money suit No. 50 of 2009 in the Court of Civil Judge Senior Division, Court No.2, Agartala and the suit was dismissed by judgment dated 25.07.2014.

After the judgment was passed the appellant was waiting for decree to be prepared by the trial Court but no decree was prepared till 18.12.2014 and on 19.12.2014 the appellant petitioner applied for certified copy and got copy on 13.01.2015. The copy of the judgment was handed over to the counsel on 19.01.2015. Thereafter from 25.01.2015 because of shifting was taken up in the branch of the bank, the case record was misplaced and it was only available on 25.03.2015 and thereafter the memorandum of appeal was prepared and for vetting of the draft some more time was required and ultimately the appeal was filed on 27.05.2015 in the process there was a delay of 215 days which was unintentional and learned counsel, Mr. Nandi, therefore prayed for condoning the delay and to accept the appeal for disposal on merit.

Learned counsel, Mr. Bhattacharji appearing for respondent No.1 submitted that this is an appeal filed under section 96 of CPC and the appellant-petitioner was supposed to make application for condonation of delay under Order 41 Rule 3A of CPC. While there is special provision prescribed for condonation of delay under CPC, Section 5 of the Limitation is not applicable and, hence, the petitioner seeking condonation under Section 5 has to be rejected outright. He has also submitted that the reasons assigned for condoning the delay in the petition is not sufficient at all and the petition suffers from want of bona fide and negligence and, therefore, the delay cannot be condoned.

Learned counsel, Mr. Saha also submitted that the appellant-petitioner was not at all diligent in taking steps. After passing of the judgment the appellant even did not apply for certified copy within the statutory period of the Limitation for filing an appeal. The reason assigned is casual and is not at all sufficient to condone.

The petitioner was supposed to make the application under order 41 Rule 3A for condonation of delay but the petition has been filed under Section 5 of the Limitation Act. However, it is converted to one under order 41 Rule 3A of CPC.

The impugned judgment in M.S 50 of 2009 was passed on 25.07.2014. The appellant-petitioner applied for certified copy only on 19.12.2014.

Mr. Nandi, learned counsel has submitted that since the decree was not drawn the application for certified copy was not made. This submission of learned counsel, Mr. Nandi is not acceptable at all. The appellant was supposed to make the application for certified copy immediately after the judgment was pronounced. Preparation of decree is a matter of the trial Court and even if the decree was not prepared the appellant petitioner would obtain a certified copy of the judgment and prefer the appeal.

This delay from 25.07.2014 to 19.12.2014 therefore, is unexplained and the explanation given is not at all acceptable. Certified copy was received on 13.01.2015 but it was handed over to the learned counsel, on 19/01/2015 that delay has also not been explained. Thereafter it is stated that because of shifting of the branch of the bank the docket was misplaced and, therefore, there was delay till 25.03.2015. It is a general explanation given which has no basis at all.

The appeal was ultimately filed on 27.05.2015 and the explanation given is that of vetting the memo of appeal etc.

Normally the expression sufficient cause should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to the appellant-petitioner. The appellant petitioner as I find was not at all diligent and rather I find the appellant petitioner was negligent and was not acted bona fide and therefore I find no reason at all to condone the delay in filing the appeal. Further I find in the impugned judgment the appellant did not even file the material documents for which the appeal was dismissed, so, on merit also I do not find any reason to condone the delay and hence the petition for condoning the delay stands rejected.

CM application accordingly stands disposed of.