

Party Name : BIKASH ROY Vs SUKANTA BHATTACHARJEE & ORS

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HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

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Heard.

This is an application for condonation of delay of 446 days in filing the appeal. The main grounds given by the applicant are that after the award was passed on 19.12.2013, the authenticated copy of the award was supplied to the counsel for the claimant by the Tribunal on 21.12.2013 but the counsel told the appellant-applicant that he would prefer appeal against the impugned judgment within the statutory period of limitation. The applicant believed his counsel and remained silent. It is also alleged that the petitioner could not contact his counsel because his right leg was broken and he was under bed rest.

According to the applicant on 21.08.2014 when he met his counsel, the counsel told him that he could not prepare the draft as the counsel was busy with the treatment of his mother outside the State of Tripura and would prepare the draft and send information to the claimant.

Again on 19.10.2014 he again went to the counsel but then when the counsel was not acted the son of the applicant took the case from the previous counsel and handed over to the new counsel.

Keeping in view these allegations, I had issued notice to the counsel, Sri Bijan Saha, Advocate against whom serious charges had been made. The counsel has filed reply and has denied all the allegations made in the applications. He has denied that he ever assured the appellant that he could prefer an appeal within the statutory period of limitation.

This Court can also take notice of the fact that even for filing an appeal the signatures of the party are required and a party will have to pay some fees and expenses of filing the litigation to the counsel. In fact, according to the counsel on 19.12.2013 when the award was passed, the applicant-claimant asked the counsel to return the file to him and according to the counsel after obtaining the certified copy of the judgment he made the information to the applicant-claimant on 22.12.2013 and two days later i.e. on 24.12.2013 the claimant received the entire case file along with the certified of the judgment.

The counsel has denied the allegation that he ever, told the petitioner that his mother was unwell and under treatment at Kolkata. According to the counsel his mother died many years back in the year 1989. It is thus more than clear that applicant has come with a cock and bull story to get his delay condoned.

Normally, this Court is very liberal in condoning the delay but any party who seeks to invoke the discretionary remedy of this Court must approach the Court with clean hands. In case the party hides material fact from the Court or misstates facts then no amount of sympathy can be used to give benefit to such a party.

Therefore, in my opinion, the application should be dismissed and the same is accordingly dismissed.