HIGH COURT OF TRIPURA
AGARTALA

RSA 32 OF 2019

1. **Tripura State Electricity Corporation,**
   Bidyut Bhavan, Banamalipur,
   (Near Bodhjungnagar School)
   P.O. Agartala, Dist. West Tripura.

2. **The Chairman/Managing Director,**
   Tripura State Electricity Corporation
   Bidyut Bhavan, Banamalipur,
   (Near Bodhjungnagar School)
   P.O. Agartala, Dist. West Tripura.

3. **The Sr. Manager (Electrical)**
   Tripura State Electricity Corporation,
   Sonamura Sub-Division, Sonamura,
   Dist. Sepahijala Tripura.

----**Appellants**.

Versus

1. **Sri Sirajul Haque,**
   S/o Sri Abdul Hadi,
   F/o Lt. Tahidul Haque.

2. **Smt. Mursheda Begam,**
   W/o Sri Sirajul Haque,
   M/o Lt. Tahidul Haque.

   Both are residents of Vill- Anandanagar, P.O. & P.S. Sonamura,
   Dist. Sepahijala Tripura.

----Respondents.

3. **The State of Tripura,**
   Represented by the Secretary, Power Department,
   Government of Tripura, New Capital Complex,
   Secretariat, P.O. Kunjaban, Agartala,
   Dist. West Tripura.

….**Proforma-respondent.**

For Appellant(s) : Mrs. S. Deb (Gupta), Advocate.

For Respondent(s) : None

Date of hearing and date of delivery of Judgment and order : **08.12.2020**

Whether fit for reporting : No

HON'BLE MR JUSTICE ARINDAM LODH

Judgment & Order(Oral)

Heard Mrs.S. Deb (Gupta), learned counsel appearing for the appellants.

2. This is a second appeal preferred at the instance of original defendant, the Tripura State Electricity Corporation Limited (for short, TSECL) and its competent officers.

The suit of the plaintiffs was dismissed by the judgment and decree dated 28th April, 2017 & 12.05.2017 respectively, passed in MS 08/2013 by the learned Civil Judge, Sr. Division, Court No.2, West Tripura, Agartala. Subsequently, the plaintiffs had filed review application for review of the said judgment dated 28.04.2017 which was registered as Civil Misc. (review) 08/2017 and the review application was allowed vide order dated 20.01.2018. On review of the judgment,

the learned trial Court finally decreed the suit of the plaintiffs awarding compensation to the tune of Rs.2,35,000/- along with other statutory benefits vide judgment dated 24th day of January, 2018 passed in M.S.08 of 2013.

3. Being aggrieved by the said judgment dated 24.01.2018, passed in original suit i.e. MS No.08/2013, the defendant-TSECL have preferred first appeal (MA 02 of 2018) before the Court of learned District Judge, West Tripura, Agartala under Section 96 of CPC along with petition for condonation of delay of 159 days in preferring the first appeal. After registration of the case, it was transferred to the Court of learned Addl. District Judge, Court No.4, Agartala.

4. The learned Addl. District Judge, Court No.4 after hearing the parties, dismissed the petition for condonation of delay [Civil Misc.(condonation) 33 of 2018] since the delay of 159 days in preferring the appeal was not explained satisfactorily.

5. Being aggrieved, the original defendant i.e. TSECL had preferred the instant second appeal before this Court against the order of dismissal of the condonation application.

6. At the time of admission of appeal, this Court had framed the following substantial question of law:

> *"Whether the first appellate court has inappropriately considered the causes as assigned in the application for condondation of delay and thereby inferred wrongly having not looked into the merit of the case in condoning the said delay"*

7. In course of hearing this second appeal, Mrs. S. Deb (Gupta), learned counsel appearing for the defendant-appellants has taken me without entering into the merit of the case to the order dated 05.03.2019, passed by the learned Addl. District Judge, Court No.4 whereby the learned first appellate court had dismissed the petition for condonation of delay. It is now well settled that any order passed relating to condonation application either allowing or dismissing the petition for condonation of delay amounts to a final order and an appeal against such order is maintainable. As such, I have taken up the second appeal on merit.

8. I have gone through the petition for condonation of delay as well as the order passed by the learned Addl. District Judge dismissing the petition for condonation of delay in preferring the first appeal of the defendant-TSECL.

9. Learned first appellate Court while dismissing the petition for condonation of delay had observed that –

> *"It is well settled law that while deciding the application for condonation of delay a liberal approach should be adopted. The expression "sufficient cause" used by legislature is adequately elastic to enable the court to use the law in meaningful manner which subserve ends of justice.*
>
> *The law of limitation is founded on public policy. The truthful cause which may warrant condonation of delay, has to shown to the satisfaction of the court. The applicant is not entitled as a matter of right to condone the delay but discretion is given to the court to condone the delay on showing the sufficient cause.*
>
> *Limitation Act is a substantive law and its provision have to be adhered to in a manner that where a valuable right accrues in favour of one party as a result of unexplained reasonable cause or directly as a result of negligence, default or inaction of the other party, such a right cannot be taken away lightly and in a routine manner. Rights which have accrued to the respondent should not be disturbed at the instance of a negligent litigant. Keeping silent for a long period of 159 days after expiry of the period of limitation disentitle him to get the delay condoned."*

10. After perusal of the order, it transpires that the TSECL, the appellants herein have stated in their petition for condonation of delay that the concerned file relating to the first appeal was handed over to the engaged learned counsel for preparation and filing of the appeal, but the learned counsel so engaged by the TSECL could not prepare and file the appeal in time. The reason for rejecting such explanation, as held by the

learned first appellate court, is that there was nothing on record that the appellant-TSECL had failed to show any record to the Court that due to such negligent act of the learned counsel they had de-panelled the said learned counsel and only for that reason the learned first appellate court held that there was no justified ground disclosed by the petitioner/appellant for condonation of inordinate delay of 159 days in filing the appeal.

11. I have given my thoughtful consideration to the reasoning as given by the learned first appellate court while dismissing the petition for condonation of delay. Learned first appellate court had observed in the order dated 05.03.2019 passed in Civil Misc.(condonation) 33/2018 that the court should show liberal approach while entertaining the petition for condonation of delay. But, in my opinion, the learned court proceeded on wrong notion only holding the reason that the engaged learned counsel was not de-panelled by the TSECL, the petition for condonation of delay did not deserve to be allowed, which, according to me, is not a reasonable decision as arrived at by the learned appellate court. From the order dated 05.03.2019, dismissing the petition for condonation of delay, the learned Addl. District Judge, Court No.4 did

not find any laches on the part of the TSECL, the appellants herein that they were negligent to proceed with the appeal.

12. It is the settled principle of law regarding second appeal that if a finding appears to be perverse then the Court sitting in the second appeal may interfere since it constitutes substantial question of law. The findings arrived at by the learned first appellate court while dismissing the petition for condonation of delay appears to this court as perverse and, accordingly, the same is interfered with.

13. In view of the aforesaid discussion, the substantial question of law as formulated by this Court is accordingly answered and I find merit in the substantial question of law. However, I am not inclined to take up the subject matter agitated in the second appeal on merit and remit the case to the learned first appellate court with the direction that the learned court after receipt of the records of the present case will proceed to hear the first appeal preferred before that court by the defendant-TSECL.

14. The order dated 05.03.2019, passed in Civil Misc.(Condonation) 33 of 2018 arising out of MA 02 of 2018 is hereby set aside and quashed.

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15. It is made clear that after receipt of the L.C. Records, the learned first appellate court shall notify the learned counsels of the parties to the *lis* fixing the date of hearing and the matter shall be disposed of within a period of six months from the date of receipt of this order.

The appeal accordingly stands disposed of.

Send down the L.C. Records.

JUDGE

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