

24-01-2020
Court No.3
(AJ/Sandip)
SI/06.

**CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 79 OF 2019

**Smt. Lakhi Debnath
Vs.
Kalpana Debnath**

Mr. Arijit Ghosh,
Ms. Swarnali Ghosh.

. . .For the Petitioner.

Mr. Saumyajyoti Dutta.

. . .For the Opposite Party.

The applicant of an application under Section 23 of the Maintenance and Welfare of Parents Senior Citizens Act, 2007 is the petitioner of the instant application under Article 227 of the Constitution of India.

The Sub-Divisional Officer, Alipurduar, who is the Chairperson of the Maintenance Tribunal at Alipurduar under the aforesaid Act by an order dated December 13, 2017 dismissed the application of the petitioner under Section 23 of the said Act.

The petitioner aggrieved by the said order preferred the appeal under Section 16 of the said Act before the Appellate Tribunal.

The Appellate Tribunal by the order impugned dated July 29, 2019 has dismissed the said appeal holding the same is barred by limitation.

By virtue of proviso appended to Section 16 of the said Act, the Appellate Tribunal is competent to

condone the delay in filing an appeal under the said provision of the said Act.

It appears from the records that the petitioner had filed an application for condonation of delay in preferring her said appeal, but the Tribunal without considering the said application has dismissed the appeal being barred by limitation.

The order impugned, therefore, is not sustainable and is accordingly set aside.

The appellate Tribunal, Alipurduar is directed to decide the application for condonation of delay in filing the appeal registered before it as Appeal No. 001 of 2019 in accordance with law.

Liberty is granted to the opposite party to file written objection to the said application within a period of two weeks from date; reply thereto, if any, be filed by the petitioner within a week thereafter.

The Appellate Tribunal is requested to decide the said application within a period of four weeks from the date of communication of this order.

It is made clear this Court is not expressing any opinion regarding the merit of the said application for condonation of delay, it is for the Tribunal to decide the same.

C.O. 79 of 2019 is allowed.

Learned advocate for the opposite party files the affidavit-in-opposition to the revisional application in terms of the order dated December 11, 2019, the same be kept with the record.

Since no affidavit-in-reply has been used by the petitioner, the allegations made in the said opposition are treated to be denied.

No order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)