

S/L 06
30.09.2021
Court. No. 07
suwayan

CO 1748 of 2021

Sunil Dhara @ Sunil Kumar Dhara & Ors.
Vs.
Tapan Kumar Maity & Ors.
(Through Video Conference)

Mr. Rabindranath Mahato
Mr. Aritra Shankar Ray

...for the Petitioners

It has been vociferously submitted by Mr. Mahato, learned Advocate for the petitioner that an application under Section 5 of the Limitation Act filed for condonation of delay in preferring the Miscellaneous Appeal No. 55 of 2010 was allowed without even serving a copy of such application upon the petitioners.

Mr. Mahato submits though on July 30, 2021 the learned Advocate for the petitioner Nos. 1, 2 and 3 were present but no copy of such application was served upon the petitioners in spite of a prayer made to that effect. The petitioner No. 4 was not represented before the First Appellate Court on July 30, 2021 as no notice and copy of such application was served upon her.

Mr. Mahato submits that subsequently the petitioner Nos. 1, 2, 3 and 4 filed separate appellations praying for recalling of the said order dated July 30, 2021.

By the order impugned, the learned District Judge, Paschim Midnapore rejected the said applications for recalling of the order dated July 30, 2021.

Mr. Mahato is right in arguing that the reasons for rejecting the said application cannot be sustained in the eye of law.

However, it is also not disputed by Mr. Mahato that taking note of the COVID pandemic, the period of limitation in connection with suits and appeals have been extended by the Hon'ble Supreme Court of India. It is also not in dispute that the miscellaneous appeal was preferred within such extended period of limitation. As such there was no necessity to pray for condonation of delay in preferring the Miscellaneous Appeal due to extension of the period of limitation.

In view thereof, the petitioners cannot be said to have suffered any prejudice by alleged non-service of the application under Section 5 of the Limitation Act which was allowed by the learned District Judge by the order dated July 30, 2021.

The reasons for filing the application for recalling the said order was that delay was condoned without serving copy of the said application upon the petitioners. In view of the reasons as stated herein above the impugned order dated September 4, 2021 is not interfered with.

CO 1748 of 2021 accordingly stands disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Hiranmay Bhattacharyya, J.)