

26.11.2021
(S/L-40)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 1320 of 2020

Tega Industries Limited
-Vs-
Sri Rakesh Upadhyay & Anr.

Mr. Sukanta Chakraborty,
Mr. Anindya Halder,
Mr. Akriti Jain,
.... For the Petitioner.

Mr. Soumya Majumder,
Mr. A. P. Gomes,
Ms. Debolina Dey,
... For the Opposite Party.

The plaintiff in a suit for declaration and permanent injunction being Title Suit No. 1422 of 2018 pending before the 2nd Court of Learned Civil Judge (Junior Division), Alipore District. 24 Parganas (South) is the petitioner of the present application under Article 227 of the Constitution of India.

The opposite party no. 1 aggrieved by an ad interim order of injunction passed in the said suit vide order No.2 dated September 14, 2018 has preferred the Miscellaneous Appeal No. 228 of 2019 before the learned District Judge District. 24 Parganas (South) at Alipore.

The grievance of the petitioner is that the said appeal has been filed beyond the prescribed period of limitation but the learned District Judge without condoning the delay has stayed the operation of the order under challenge in the said appeal.

Mr. Soumya Majumdar learned advocate appearing on behalf of the opposite party no. 1 submits that the ad interim order of injunction under challenge in the said appeal cannot stand for a moment under the law, he however submits that an application has already been filed in the said appeal for condonation of the said delay.

Admittedly the said appeal was filed beyond the prescribed period of limitation as such the learned Appeal Court below has acted with material irregularity in staying the operation of the order under challenge in the said appeal without condoning the delay first.

The order impugned being order no. 2 dated September 30, 2019 passed in the aforesaid miscellaneous appeal is set aside.

C.O. 1320 of 2020 is disposed of by requesting the Appeal Court below to consider and dispose of the said application for condonation of delay on the next date fixed. However, in the event due to some unavoidable reason if the said application cannot be disposed of on the said date it must be disposed of within seven days thereafter.

The parties are at liberty to exchange their affidavits on the said application in the meantime.

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.)