

23.03.2022
SL No.14
Court No.8
(gc)

**SAT 4 of 2022
With
CAN 1 of 2022
With
CAN 2 of 2022**

**Sri Basudeb Biswas
Vs.
Golam Laskar & Ors.**

(Via Video Conference)

Mr. Sankar Prashad Dalapati,
Mr. Satyajit Mahata,
Mr. Subrata Sarkar,
....for the Appellant.
Mr. Satyajit Mandal,
Mr. Shouvik Naskar,
...for the Respondent No.1.

Re: CAN 1 of 2022

This is an application under Section 5 of the Limitation Act for condonation of delay.

The appeal is arising out of the judgment dated 28th February, 2020.

In view of the order of the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 in SMW (C) No.3 of 2020 dated 23rd September, 2021 in which at Paragraph 8, the Hon'ble Supreme Court has clearly stated that:

“In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining,

with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.”

And by reason of the Special Bench order dated 17th January, 2022 (WPA 5323 of 2020) extending the interim order in all matters till 28th February, 2022, the appeal is in time.

The Additional Stamp Reporter in his report dated 25th January, 2022 has taken note of the said orders and has also given information that the appeal is in time. We accept the same as of the report of the Additional Stamp Reporter.

In view thereof, the application for condonation of delay being CAN 1 of 2022 stands disposed of.

**Re: SAT 4 of 2022
With
CAN 2 of 2022**

We have heard the learned Counsel for the appellant and the respondent No.1. The appeal is arising out of a money decree passed in favour of the respondent No.1 for the works claimed to have been executed by the respondent No.1 for the School. The Headmaster is the appellant before us. There is a delay of 280 days in filing the First Appeal before the learned Additional District Judge, Fast Track, 2nd Court, Diamond Harbour, 24-Parganas (South).

The learned Appellate Court dismissed the application under Section 5 of the Limitation Act on consideration that the appellant has failed to substantiate

that there is a sufficient cause for not being able to present the appeal within the period of limitation. In coming to the finding, the Appellate Court had taken into consideration that the appellant as a Headmaster cannot plead ignorance of law and there was lack of diligence. Sufficient cause has not been defined under Section 5 of the Limitation Act. It has to be assessed on the basis of the facts and circumstances of each case keeping in mind that the dismissal of the said application may result in a meritorious case being defeated by reason of delay. No one is going to be benefited by the delay as a litigant runs the peril of extinguishment of his remedy which may be fatal to the litigant and when it concerns an educational institution. In the event it is ultimately found that the said money is not payable, it would save the exchequer of the school. At the same time, we cannot lose sight of the fact that the respondent No.1 is the successful litigant.

We have perused the evidence adduced before the learned Appellate Court in connection with the application under Section 5 of the Limitation Act.

The appellant is the Headmaster of the school. His nature of activities he has explained and it cannot be said that there has been any culpable negligence on his part in failing to prefer the appeal within the period of limitation. Approach of the Court should be justice oriented. The Court needs to balance between the substantial justice and technical considerations and in our view in the event

we do not allow the appeal on merits, serious prejudice may be caused to the appellant.

However, having regard to the fact that the respondent No.1 is a decree-holder, the appellant upon depositing the entire decretal dues in Title Execution Case No.13 of 2020 to the learned Civil Judge (Junior Division), 2nd Court, Diamond Harbour, South 24-Parganas within one week from date, the learned Trial Judge is requested to hear and dispose of the appeal on merits. However, in default, the order dated 28th February, 2020 shall revive and the decree shall immediately be executable.

The learned Executing Court is requested to deposit the entire decretal amount in a suitable fixed deposit account yielding highest return in a nationalized bank till disposal of the appeal.

We make it clear that we have not gone into the merits of the appeal.

There shall be an unconditional stay of operation of the impugned order for one week and in the event of compliance of our order, the impugned order shall stand set aside and the Title Execution Case No.13 of 2020 shall remain stayed till disposal of the appeal.

It would be open for the respondent No.1 to implead the School and the Managing Committee of the said School at the appellate stage, if so advised.

The learned Counsel for the appellant submits that the appellant may be allowed to approach the Managing

Committee of the said School for the fund required to be deposited before the Executing Court in terms of this order.

With the aforesaid observation the second appeal being SAT 4 of 2022 and the application being CAN 2 of 2022 stand disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)