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04.05.2023
Ct. No. 33
rrc

FMAT 43 of 2019
with
IA No. CAN 334 of 2019
with
IA No. CAN 335 of 2019

(Mintu Mondal Vs. Shyamal Saha & Anr.)

Mr. Muktokesh Das
Mr. Tanmoy Biswas
Mr. Bappaditya Roy
.... For the appellant/applicant

Affidavit-of-service filed by Mr. Das, learned advocate appearing for the appellant is kept on record.

None appears to represent the respondents in spite of such service.

Re: CAN 334 of 2019

This application has been taken out praying for condonation of delay in preferring the appeal.

Mr. Das submits that the appellant became a handicapped person following the accident and he was the sole bed-earner of the family and he could not contact the learned advocate in due time and hence, there is a delay of 85 days in preferring the appeal.

Heard Mr. Das. Perused the materials on record placed before me.

The expression "*sufficient cause*" appearing in Section 5 of the limitation Act should be liberally construed unless any inaction or want of *bona fide* is imputable to the applicants. Generally, acceptance of

explanation furnished towards the delay is the rule and refusal is an exception. I do not find any material to infer that the appellant resorted to dilatory tactics to gain some undue advantage or there was a gross negligence on the part of the appellant in approaching the court in due time.

In view thereof, the explanation giving towards the delay in preferring the appeal is found to be acceptable. Consequently, the delay is condoned and the application being **CAN 334 of 2019** is allowed.

Re: CAN 335 of 2019

Mr. Das submits, upon instruction, that the appellant does not want to proceed with the application being CAN 335 of 2019.

In view thereof, the application being **CAN 335 of 2019** is dismissed as not pressed.

Let the hearing of the appeal be expedited.

The appellant is directed to put in the requisites for service of notice of appeal upon the respondents within two weeks.

Lower Court Records be called for through Special Messenger at the cost of the appellant. Such costs shall be deposited within two weeks from date.

Immediately, after arrival of the Lower Court Records, the office shall examine the same and, if found complete, shall issue notice of arrival of Lower Court Records to the learned advocate for the appellant.

The appellant is directed to prepare 3 (three) sets of informal paper books-printed, typewritten or cyclostyled, as the case may be, out of Court, within four weeks from the date of service of notice of arrival of Lower Court Records and to file the same after serving a copy upon the learned advocate for the respondents.

All formalities regarding preparation of paper books are dispensed with but the learned advocate-on-record for the appellant is directed to incorporate all the relevant documents in the informal paper books.

Liberty to mention after filing of paper books.

(Partha Sarathi Chatterjee, J.)