

06.09.2022
Item No.7
Ct. No.7
CHC
(disposed of)

C.O.750 of 2022

Mahendra Shaw & anr.
Vs.
Kadam Shaw

Mr. Ayan Banerjee,
Ms. Debjani Sengupta,
Mr. Dev Kumar Sharma
...for the petitioners

Mr. Ashok Pandey
...for the opposite party

The subject-matter of challenge in this case is against the order, dated 25th September, 2019, condoning delay of 14 days under Section 5 of the Limitation Act in connection with applications under Sections 7(1) and 7(2) of the W.B.P.T. Act, for the inbuilt mechanism contained therein prescribing limitation.

Reliance is placed by Mr. Banerjee on such issue reported in **(2019) 10 Supreme Court Cases 660** delivered in the case of ***Bijay Kumar Singh & ors. vs. Amit Kumar Chamariya & anr.*** to submit that for a complete mechanism having been provided in the Act itself dealing with limitation prescribed, there is no scope for application of Limitation Act under Section 5 of the Limitation Act.

Per contra, Mr. Ashok Pandey, learned advocate for the opposite party submits that there has been a delay of 14 days only, which is condoned by the court below upon consideration of the explanation being offered in the petition itself. The court below was satisfied with the explanation offered, and after giving hearing to both the parties, application under Section 5 of the Limitation Act was allowed condoning the delay, learned advocate for opposite party argues.

Upon perusal of the impugned order, it appears that court below has not taken into account the decision, as cited by the petitioners, referred hereinabove. The ratio of the decision is very clear to reveal that a complete mechanism has been incorporated in the Act itself i.e. under Sections 7(1) and 7(2) of the W.B.P.T. Act, for which, there is hardly any scope for any application under Section 5 of the Limitation Act to condone the proposed delay.

For the discussion made hereinabove, the impugned order is set aside with a direction upon the court below to hear out the same afresh four (04) weeks after the Puja Vacation of the Court below for the year 2022, giving a hearing to both the parties, but without giving any unnecessary adjournment, unless it is extremely unavoidable.

With this observation/direction, the revisional application stands disposed of.

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)