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C.O. 809 of 2022

**Sk. Ajlu Mohammad & Ors
Vs
Sk. Jamsed Mohammad & Anr**

Mr. Balaram Pandit,
Mr. Krishna Deo Das, ... For the petitioners.

The subject matter of challenge in this revisional application is against the order dated 18th December, 2021 passed by learned Civil Judge (Senior Division), 2nd Court, Contai, allowing an opportunity to opposite parties/appellants to adduce evidence in connection with a prayer for condonation of delay under Section 5 of the Limitation Act.

Admittedly, there has been a delay of 1165 days in preferring the instant appeal.

As per submission disclosed by the learned advocate for the petitioners/respondents that the entire effort of the opposite parties/appellants was to cause delay in the disposal of the appeal, so that decree obtained by the respondents may be frustrated.

The only contention expressed by the petitioners is that by adducing evidence, there will be further delay in the disposal of condonation application, and respondents would be put to face unnecessary harassment.

In view of the above, no prior notice upon opposite parties is considered to be necessary.

The settled proposition of law is that the Court will always desire to have best evidence for the adjudication of an issue raised before it.

There is no rule preventing a party from adducing evidence in support of his stand.

That being the position, merely by adducing evidence, there would be delay in the disposal of Section 5 application for condonation of delay is very hard to believe.

However, the collection of evidence in connection with the application for condonation of delay may be expedited.

Accordingly, learned Civil Judge (Senior Division), 2nd Court, Contai, in connection with Title Appeal No. 52 of 2018 is requested to ensure collection of evidence in connection with an application under Section 5 of the Limitation Act, as referred in the impugned order, providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment, unless it is extremely unavoidable.

Petitioners are directed to make communication of this order to the learned court below as well as to the learned advocate appearing in the court below for the opposite parties and the opposite parties.

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

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)