

10.11.2022  
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Ct. no. 652  
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**C.O. 1923 of 2019**

**Md. Nejamuddin  
Vs.  
Gobinda Chandra Saha & Ors.**

Mr. Partha Pratim Roy  
Mr. Anirban Das  
Ms. Poulami Chakraborty ...for the petitioner

Mr. Bhudeb Chatterjee  
Ms. Susmita Saha  
Mr. Niladri Saha ...for the opposite party

Being aggrieved and dissatisfied with the order dated 23<sup>rd</sup> March, 2019 passed by the learned Civil Judge (Junior Division), 1<sup>st</sup> Court, Malda in Misc. case no. 10 of 2017 arising out of Miscellaneous Pre-emption case no. 13 of 2010, present application under Article 227 of the Constitution of India has been preferred.

It has been submitted by the petitioner that the opposite party nos. 1 to 4 herein as pre-emptors filed an application under Section 8 of the West Bengal Land Reforms Act against the petitioner herein before the learned Civil Judge (Junior Division), 1<sup>st</sup> Court, Malda which was registered as Pre-emption case no. 13 of 2010. Subsequently, the opposite party did not take any step and as such the said pre-emption case was dismissed for default on 18.5.2015. After two years, in the year 2017, an application under Order IX Rule 9 of

the Code of Civil Procedure was filed for recalling the order of dismissal dated 18.5.2015 along with an application under Section 5 of the Limitation Act which was registered as Misc. case no. 10 of 2017. The present petitioner contested and objected the said application for restoration by filing written objection but the learned trial court by the impugned order was pleased to allow the application filed by the opposite party under Order IX Rule 9 of the Code of Civil Procedure after condonation of delay under Section 5 of the Limitation Act.

Learned counsel for the petitioner submits that learned trial court illegally allowed the application made by the opposite party and restored the original pre-emption case without any finding whether there are sufficient reason for the opposite party for not taking steps on the date of dismissal of the case. Learned trial court failed to consider that there was no due diligence on the part of the pre-emptors in prosecuting the said case before the court below and learned court should have appreciated that unless any satisfactory explanation for non-appearance on the date of hearing has been made, the application for restoration under Order IX rule 9 of the Civil Procedure Code cannot be allowed.

Learned counsel for the opposite party submits that the concerned law clerk who was dealing with the case became ill and subsequently died and for which the

pre-emptors could not take steps in time. However, the pre-emptors have a good case to succeed and as such learned trial court has not committed any wrong in allowing the said application for restoration, with a view to dispose of the case on merit.

Having considered the facts and circumstances of the case it appears that if the ultimate finding of the order impugned remains uninterfered by this court, the highest prejudice that may cause to the petitioner herein would be that the Misc. Case would be disposed of on merit after contested hearing and nothing more.

In **AIR 1987 SC 1353** Apex Court clearly observed that :-

*“3. The legislature has conferred the power to condone delay by enacting Section 5 [ Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on ”merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:*

*“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*

*2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*

*3. “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why*

*not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

*4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

*5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

*6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

*Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.*

Accordingly it is clear that court should decide the matter on merits unless the case is hopelessly without merit.

In view of above, C.O. 1923 of 2019 is hereby disposed of without interfering the order passed by the court below but with a direction upon the court below to dispose of the Misc. Pre-emption case no. 13 of 2010 preferably within a period of eight months from the date of the communication of the order, since the case is continuing for more than a decade.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

**(Ajoy Kumar Mukherjee, J.)**