

DL. February
18. 7, 2022

S.A. 121 of 2021

Sri Samir Das
Vs.
M/s. R.C.C. Build View India Pvt. Ltd.

Mr. Rajdeep Bhattacharya,
...for the appellant.

Mr. S.P. Mukherjee,
Mr. Shuvajit Bose,
...for the respondent.

The first appellate court dismissed the application filed under Section 5 of the Limitation Act for condonation of delay in preferring the appeal, against the ex parte decree of eviction passed by the trial court, on the ground that the appellant had failed to give any sufficient cause for not being able to prefer the appeal within the period of limitation.

Admittedly, due to pandemic the appellant had took months' time to prefer the appeal against the ex parte decree of eviction. The explanation offered was extremely vague and sketchy. However, in view of the fact that the appellant had filed a written statement in the suit, we are inclined to give another opportunity to the appellant to contest the appeal before the first appellate court on merits subject, however, to payment of costs and occupational charges. .

We, therefore, set aside the order passed by the first appellate court rejecting the application for condonation of delay in preferring the appeal thereby dismissing the title appeal and allow the application for condonation of delay in preferring the appeal

before the first appellate court.

The appellant is, however, directed to pay costs assessed at Rs. 10,000/- to the Calcutta High Court Legal Services Committee within ten days from date. The said amount is to be utilised for the welfare of the street children.

We appreciate Mr. S. P. Mukherjee, learned senior advocate appearing on behalf of the plaintiff/respondent, for not raising any objection to such payment and utilisation of costs.

In addition to payment of costs, as aforesaid, the appellant shall also pay to the plaintiff/respondent a sum of Rs. 1.75 lakh on or before February 28, 2022 towards occupational charges, which the plaintiff/respondent shall receive without prejudice to its rights and contentions in the first appeal. We direct payment of such amount towards occupational charges keeping in view the fact that the defendant/appellant has not paid anything to the present plaintiff.

In the event, the costs, as aforesaid, is not deposited with the Calcutta High Court Legal Services Committee and/or the occupational charges, as directed above, are not paid to the plaintiff within the time stipulated, as above, this order shall stand automatically recalled without any further reference to this court and the impugned order dated April 16, 2021 shall stand revive as a result of which the ex parte decree of eviction passed by the trial court shall be executable immediately.

With the aforesaid directions, the appeal is disposed of even at the admission stage.

In view of disposal of the appeal, nothing remains in

the application for stay filed under CAN 1 of 2021 and the same is also disposed of.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

(Soumen Sen, J.)

dns

(Ajoy Kumar Mukherjee, J.)