

20.09.2022
Item No.6
Ct. No.7
CHC
(disposed of)

C.O.2105 of 2022

Sri Asis Pal & ors.
Vs.
Sk. Sabir Uddin & ors.

Mr. Sounak Bhattacharya,
Mr. Raghunath Das
...for the petitioners

Mrs. Usha Maiti, (in Virtual Mode)
Mr. Sukanta Das,
Mr. Sakya Maity
...for the opposite parties

Mr. Bhattacharya, learned advocate appearing for the petitioners assails the order dated 20th April, 2022, passed by learned Civil Judge (Senior Division), 1st Court, Contai, Purba Medinipur, in Title Appeal No.17 of 2010, alleging that there has been mis-calculation to disclose the period of delay caused in preferring the appeal, and more so, there has been no explanation offered preventing the petitioners from preferring the appeal much earlier.

It is contended further by Mr. Bhattacharya, that the court below in appeal, while condoning application under Section 5 of the Limitation Act, has not assigned any reasons regarding delay caused.

Per contra, Mrs. Usha Maiti, learned advocate appearing for the opposite parties in virtual mode disputes with the submission advanced by Mr. Bhattacharya, replying that there has been adequate

calculation disclosed in the application for Section 5 of the Limitation Act, together with explanation disclosing delay caused in preferring the appeal. The court below has considered all such explanation of delay in context with the calculation of delay, and finally allowed the application.

Supporting the order of the court below, Mrs. Maiti submits that there lies nothing to be interfered with.

Having considered the submission of both sides, it appears that the bone of contention between the parties is with regard to the calculation part of dates causing delay, and non offering of any explanation in the application under Section 5 of the Limitation Act.

Undoubtedly, there has been some delay caused whatever might be the period, but there was an application under Section 5 of the Limitation Act for condoning the delay. The contention of the petitioners is that there has been no sufficient explanation offered, which is however, denied by Mrs. Maiti. There has been explanation of delay offered, but such explanation would itself not sufficient to redress the harassment, hardship already caused to the petitioners/decreed-holders.

In a situation like this, the amount of cost, as ordered to be deposited, appears to be meagre one, not sufficient to redress the harassment already caused to the petitioners. The impugned order is thus modified

thereby directing the opposite parties to deposit cost of Rs.10,000/- (Rupees Ten Thousand only) to the petitioners within three weeks after the Puja Vacation of the court below.

With this, the impugned order stands modified to the extent mentioned hereinabove. Other portion of the order would however, remain unchanged.

This would not, however, prevent the court below in appeal to arrive at logical conclusion of the appeal giving hearing for the purpose in a most expeditious manner, without granting any unnecessary adjournment, unless it is extremely unavoidable.

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

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

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.)