

21.03.2022
Item No.09
Suman
Ct.42

(Via Video Conference)

CRMSPL 148 of 2018
With
CRAN 1 of 2018 (Old CRAN 2781 of 2018)

Surendra Kumar Sharma
Vs.
Gobinda Chattapadhyay & Anr.

Mr.Suman De
Mr. Debanshu Ghorai
...for the petitioner

Affidavit of service be kept with the record. It is found from the service report that the opposite party received the notice of the application under Section 5 of the Limitation Act but he has not turned up. Therefore, this Court is of the view that there is no impediment in disposing of the application under Section 5 of the Limitation Act ex parte against the private opposite party No.1.

The petitioner filed a criminal complaint under Section 138 of the Negotiable Instruments Act on 19th December, 2006 before the learned Chief Judicial Magistrate at Alipore against the opposite party No.1. The said application was, however, dismissed for non-prosecution on the ground that on 5th October, 2016 the

petitioner did not attend the trial Court without any intimation.

Against the said order the petitioner filed a revisional application which was registered as criminal motion before the learned Sessions Judge at Alipore without filing an application for special leave to appeal. The said application was filed along with an application under Section 5 of the Limitation Act praying for condonation of delay. On the date of hearing of the said application under Section 5 of the Limitation Act due to the absence of the petitioner the application under Section 5 of the Limitation Act was dismissed for non-appearance of the petitioner. Consequently the criminal motion stood dismissed. The petitioner has filed an application under Section 378(4) of the Code of Criminal Procedure praying for Special Leave to Appeal after condonation of delay of 712 days. It is submitted by the learned advocate for the petitioner that the delay was conducted due to the reason that the petitioner on wrong advice diligently proceeded with the proceeding before the learned Sessions Judge, South 24 Parganas which was registered as Criminal Motion No.147 of 2018.

I have heard the learned advocate for the petitioner. I have also perused the entire record.

Delay in filing the Special Leave to Appeal is, in my considered view, sufficiently explained. Accordingly,

the delay is condoned. The application under Section 5 of the Limitation Act is allowed.

In Re:- **CRMSPL 148 of 2018**

Perused the application for Special Leave to Appeal. Heard the learned advocate for the petitioner. Special Leave to Appeal is granted.

The appellant is directed to file Memorandum of Appeal within 30 days from the date of this order.

The connected application is, thus, disposed of.

(Bibek Chaudhuri, J.)