

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

S.A. 281 of 2017

CAN 1 of 2017

CAN 2 of 2018

CAN 3 of 2022

Samba Roy Pramanik & Ors.

VS.

Mrigan Roy Pramanik & Ors.

For the Appellants : Mr. Amal Saha, Adv.
Mr. Suranjan Mandal

For the Respondents. :Ms. Sohini Chakraborty, Adv.
Mr. Kaushik Chowdhury
Mr. S.Kanu

Hearing concluded on : 11th December, 2023

Judgement on : 19th December, 2023

Siddhartha Roy Chowdhury, J :

1. This appeal challenges the order dated 19th July, 2016 passed by learned District Judge, Purba Medinipore in Title Appeal No. 72 of 2013, affirming thereby the judgment passed by learned Civil Judge (Junior Division), Haldia, District Purba Medinipore in Title Suit No. 102 of 2005.
2. For the sake of convenience the parties will be referred to as they have been arrayed in the suit.
3. Briefly stated that the predecessor-in-interest of this plaintiffs, Smt. Menaka Sundari Roy Pramanik acquired the suit property consequent upon a compromise decree passed in Title Suit No. 131 of 1951 passed by learned Civil Judge (Senior Division), 2nd Court, Purba Medinipur.

4. On 4th May, 1993 and 5th May, 1993, Smt. Menaka Sundari Roy Pramanik transferred the properties to the plaintiffs by executing deeds of gift being Nos. 3176/1993, 3174/1993 and 3175/1993 and thereby the plaintiffs acquired right, title, interest and possession in respect of the suit properties.
5. On and from 22nd July, 2014, the defendants started denying such title of the plaintiffs and also started disturbing their possession in respect of the suit property on the basis of erroneous entries made in the revenue records of right both R.S and L.R. Such act of the defendants goaded the plaintiffs to file the suit seeking declaration of title and permanent injunction among other relief.
6. The defendant Nos. 1 to 4, 6 to 8 and 11 contested the suit by filing written statement, denying the averments made in the plaint.
7. It is the specific case of the defendants that by virtue of the compromise decree passed in Title Suit No. 131 of 1951, the predecessor-in-interest of the plaintiffs, namely Smt. Menaka Sundari Roy Pramanik obtained life interest over the suit property. She did not have the right to transfer the suit property and it was agreed that upon her demise the suit property would devolve upon her legal heirs. Therefore, Smt. Menaka Sundari Roy Pramanik could not have transferred the properties in favour of the plaintiffs by executing the deed of gift and the plaintiffs cannot be said to have acquired any right, title and interest over the property on the strength of such instrument executed by Smt. Menaka Sundari Roy Pramanik. The defendants prayed for dismissal of the suit.

8. Learned trial court after considering the testimony of witnesses for the parties and together with the documentary evidence, was pleased to pass the decree in favour of the plaintiffs.
9. Aggrieved thereby the defendants preferred an appeal before the learned District Judge, Purba Medinipur being Title Appeal No. 72 of 2013 beyond the prescribed period of limitation and learned First Appellate Court refused to condone the delay. Consequently, the appeal was not admitted.
10. This second appeal was admitted on 12th September, 2017 on the following substantial question of law:-

“whether the learned First Appellate Court was justified in dismissing the appellants’ application for condonation of delay by disbelieving the talk of settlement and/or Salish which prevented them from filing the appeal within the prescribed period of limitation or not”.
11. Mr. Amal Sala, learned counsel representing the appellants submits that after the decree was passed the parties decided to settle the dispute amicably out of court and for that did not show any interest to challenge the judgment of learned trial court. When the talk of settlement failed to yield any result the appellants/defendants approached the learned First Appellate Court to assail the judgment of learned trial court.
12. Drawing my attention to the petition filed by the appellants before the learned First Appellate Court in Title Appeal No. 72 of 2013. Mr. Saha learned counsel submits that the suit was decreed on 17th June, 2013 and on 18th June, 2013, the appellants prayed for certified copy and obtained the same on 9th July, 2013. The villagers as well as the defendants were keen to settle the dispute amicably and the plaintiffs

also reciprocated. But on 15th December, 2023 the plaintiffs refused to settle the dispute and the defendants preferred the first appeal.

13. Drawing my attention to the averment of plaintiffs in their written objection to the petition under Section 5 of the Limitation Act, wherein it is adverted:-

“ As far as we could know that the appellants were advised by their learned advocates not to prefer any appeal as the appeal had/has no merits”.

Mr. Saha, learned counsel submits that this statement precisely supports the contention of the defendants that a talk of compromise was initiated and the plaintiffs participated in that proceeding, otherwise it would have not been possible for the plaintiffs to know how the defendants were advised or what was the advice, the defendants received from their learned advocates.

14. According to Mr. Saha by the order impugned, learned First Appellate Court foreclosed the claim of the defendants by dismissing the appeal being barred by limitation or in other words by not condoning the delay.

15. It is further submitted that by several judicial pronouncement of Hon'ble Supreme Court it has become settled principal of law that lenient view should be taken by the court while considering the petition for condonation of delay in exercise of the power under Section 5 of the Limitation Act.

16. To buttress his point Mr. Saha places his reliance upon a judgment of the Hon'ble Supreme Court in Ram Nath Sao @ Ram Nath Sahu and others.-vs- Gobardhan Sao and others reported in (2002) 3 SCC 195 wherein the Hon'ble Apex Court held in paragraphs 12:-

“A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words ‘sufficient cause’ under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi jain v. Kuntal Kumari and State of W.B. v. Administrator, Howrah Municipality.

It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses xxxxxxxxxxxxxxxx”.

17. Per contra Ms. Chakraborty, learned counsel for the plaintiffs/respondents submits that the plea of talk of settlement is only a ploy to justify the unjust action of the defendants.

18. According to Ms. Chakraborty the content of the application under Section 5 of the Limitation Act is far from being correct. The application was disposed of by the First Appellate Court after recording evidence of the parties.

19. Mr. Sanjib Roy Pramanik, the appellant no. 2 while adducing evidence as PW-1 stated that after obtaining the certified copy, the

appellants tried to settle the dispute as advised by the villagers and the villagers' finally informed them about the unwillingness of the respondents to make compromise. So there was delay from 16th July, 2013 to 22nd December, 2013.

20. The testimony of PW-1 does not suggest the participation of the plaintiffs in any proceeding for settlement. During cross-examination PW-1 stated that the Gram Committee of the village was not requested by the defendants for initiating the talk of settlement. The Gram Committee never issued any notice to that effect and PW-1 further stated that he approached verbally one Subhas Das, a member of the Gram Committee to settle the dispute. Said Subhas Das, however, was not examined.
21. Shri Pradip Das, a Co-villager while adducing evidences of PW-2 stated that a talk of compromise was held before the villagers and the said witness but the respondents denied to attend the meeting on 15th December, 2022. During cross-examination of PW-2 stated that Salish took place on 15th December, 2013. The respondent did not turn up in the said Salish. Shri Mriganka Roy Pramanik, the respondent no. 2 submitted his evidence in chief supported by affidavit but he was cross-examined.
22. According to Ms. Chakraborty, learned counsel for the plaintiffs, the testimony of PW-1 and PW-2 are sufficient to demonstrate that no talk of settlement ever took place between the parties, at least the plaintiffs did not take part to any such settlement. It is a concocted story textured to justify the inaction and negligence on the part of the defendants.
23. By their negligence the defendants lost their right to appeal and a valuable right has been accrued in favour of the plaintiffs, which may not

be taken away when no sufficient cause was shown by the defendants in not preferring the appeal in time taking into consideration the fact that already ten years have elapsed since the date of decree.

24. The impugned order passed by learned First Appellate Court rejecting the application under Section 5 of the Limitation Act is well reasoned and may not be interfered with.

25. In support of her contention, Ms. Chakraborty relies upon the judgment of the Division of the Hon'ble Court in A.E.G. Carapiet –vs- A.Y. Derderian reported in AIR 1961 CAL 359.

26. Upon perusal of materials on record and particularly the written objection filed by the plaintiffs which was relied upon by Mr. Saha, learned counsel for the defendants, I find that though in Paragraph “9” of their written objections the plaintiffs stated:-

“As far as we could know that the appellants were advised by their learned advocate not to prefer any appeal as the appeal had/has no merits”.

But upon reading of the entire written objections, it appears that the plaintiffs denied to have attended any meeting for compromise by and between the parties.

27. The testimony of PW-1 also demonstrates that the plaintiffs did not take part, even were not willing to participate in any talk for compromise and PW-2 clearly stated that on 15th December, 2013, the respondents did not turn up. The testimony of these two witnesses are sufficient to demonstrate the hollowness in the claim of the defendants that because of the talk of settlement they did not exercise their right of appeal.

28. Hon'ble Apex Court in Basawraj and another –vs- The Special, Land Acquisition Officer reported in 2013 AIR SCW 6510 held:-

“9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: [Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors.](#), AIR 1964 SC 1336; [Lala Matadin v. A. Narayanan](#), AIR 1970 SC 1953; [Parimal v. Veena @ Bharti](#) AIR 2011 SC 1150; and [Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai](#) AIR 2012 SC 1629.)

11. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: [Madanlal v. Shyamlal](#), AIR 2002 SC 100; and [Ram Nath Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors.](#), AIR 2002 SC 1201.)

12. *It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.*

15. *The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature".*

29. The conduct of the appellants demonstrates that they were negligent and there was lack of bona fide on their part. A valuable right has been accrued to the plaintiffs because of the omission or failure on the part of the defendants to prefer the appeal. No doubt, the provision of Section 5 of the Limitation Act is beneficial in nature but negligent conduct of the

defendants creates hurdle to extend the benefit of Section 5 of the Limitation Act in favour of the defendants.

30. Under such circumstances, I do not find any reason to take away the right already accrued to the plaintiffs because the negligent conduct of the defendants by replenishing the right of the defendants to prefer appeal, which they allowed to wither away.

31. The order impugned stands to the reason and does not warrant any interference. Consequently, the appeal is dismissed along with connected applications, if any.

32. The order passed by learned First Appellate Court stands affirmed.

36. Let a copy of this judgment along with the lower court records be sent down to the learned Trial Court immediately.

37) Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)