

04 **22.11.
2023**

Ct. No. 04

Ab

**SAT 34 of 2022
IA No. CAN 1 of 2022**

**Samir Mondal
Vs.
Sk. Kutubuddin and others.**

**Mr. Sounak Bhattacharyya,
Mr. Sounak Mondal,
Mr. Abhirup Halder.**

... for the appellant.

**Mr. Bhagat Choudhury,
Mr. Subrata Mukherjee.**

... for the respondent no. 1.

The instant appeal is taken up for final disposal at the stage of Order XLI Rule 11 of the Code of Civil Procedure for the simple reason that the instant appeal arises from an order passed by the first appellate court rejecting an application for condonation of delay.

Admittedly, there is a considerable delay in preferring the appeal before the first appellate court and the reason assigned therein pertains to the medical condition of the father and the brother and that the appellant was discharging his duties both social and moral and, therefore, could not file the appeal within the statutory period provided therefor.

The first appellate court proceeded to dismiss the application for condonation of delay as it found that the explanation offered in the application for condonation of delay is not sufficient and/or satisfactory, more particularly, in absence of any supporting document in relation thereto. The first appellate court further proceeded to hold that the moment the decree passed in a suit has been executed and it is only after the execution case having disposed of on recording

satisfaction, it shows lack of due diligence on the part of the plaintiff/respondent.

The Counsel for the plaintiff/respondent opposes the instant appeal on the premise that though the plea of illness is pleaded in the application for condonation of delay, but there is no supporting document produced before the trial court.

We find certain supporting medical documents have been annexed with the application filed in connection with the instant appeal. Although the first appellate court has recorded that there was no document produced before it in support of the allegation as to the illness of the father of the appellant, but we find that certain documents, which have come up in the instant appeal, touching upon the same needs to be looked into.

It is no longer *res integra* that the court should not adopt a strict and pedantic approach in dealing with the application for condonation of delay nor should expect the litigant to explain the delay on daily basis but must adopt a lenient and pragmatic approach so that the litigation is decided on merit and not to be nipped in the bud on the anvil of the law of limitation.

We are also not unmindful that the litigant must show bona fide and alacrity in approaching the higher forum and if there is a linkage with the sufficiency of the cause between the period provided for filing the appeal and the date on which the appeal is presented, there is no fetter on the part of the court to allow the application for condonation of delay. Furthermore, the execution of a decree cannot be a ground for rejection of an application under Section 5 of the Limitation Act. The right of appeal being statutory cannot be defeated nor abridged by the notion that the decree sought to be challenged before the

appellate forum is executed. It would frustrate the very purpose and the intention of the legislation by incorporating the provisions contained in Section 144 of the Code relating to restitution and, therefore, we are unable to concur with the finding of the first appellate court that once the decree is executed, the application under Section 5 of the Limitation Act cannot be entertained.

The language employed in Section 5 of the Limitation Act mandates the satisfaction of the court concerning the sufficiency of the cause and should not be swayed by the technicalities in dispensation of justice. We are also not unmindful of the somewhat settled proposition of law that the length of delay is immaterial; what is important factor is the sufficiency of the cause shown by the appellant and even a delay of shorter period may not be condoned in absence of the sufficient cause. On the other hand, the delay of longer period may be condoned if the court finds that the cause shown is satisfactory. It is a discretion of the court to be exercised judiciously and in pursuit of rendering justice.

We find that the medical documents have been placed in the instant appeal to which we feel that a further opportunity should be given to the appellant to place the aforesaid documents or the further documents in this regard before the appellate court so that the proper justice may be given in relation to the instant litigation.

We, therefore, set aside the impugned order.

The matter is remitted to the first appellate court to rehear the application for condonation of delay afresh after given an opportunity to the parties to produce the relevant documents in support of the explanation, which

should not exceed beyond fortnight from the date of communication of this order.

The appellate court shall make an endeavour to dispose of the said application as expeditiously as possible preferably on or before the closure of the court for Christmas Vacation for the year 2023.

With these observations, the appeal and the connected application being CAN 1 of 2022 are disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)