

06.01.2023  
SL No.7  
Court No.8  
(gc)

**SMAT 1 of 2014**

**Kamaluddin Mallick & Ors.**

**Vs.**

**Umed Ali Mallick & Ors.**

This matter appeared in the Warning List of 29<sup>th</sup> November, 2022 with a clear indication that this matter shall be transferred to the Regular List on 5<sup>th</sup> December, 2022. Since then the matter is appearing in the list. The appellants have due notice of the matter. The appellants are not represented.

The matter previously appeared on 8<sup>th</sup> November, 2021 and 9<sup>th</sup> November, 2021. On 9<sup>th</sup> November, 2021 we passed an order for classification of the appeal and directed the appellants to cure the defects within a period of two weeks from that date. The Section Officer/Superintendent (S.R. Section) in its report dated 5<sup>th</sup> January, 2023 has indicated that the defects as indicated by the Additional Stamp Reporter in its report dated 13<sup>th</sup> February, 2014 have not yet been removed. In fact, there is non-compliance of our order dated 9<sup>th</sup> November, 2021.

We could have dismissed the appeal for non-removal of the defects. However, we propose to find out whether the First Appellate Court was justified in rejecting the application under Section 5 of the Limitation Act in

filing the appeal arising out of the order passed by the learned Trial Court on 06.10.2010 in an application for temporary injunction. The Trial Court dismissed the application on merits on 06.10.2010. The Trial Court refused to exercise its discretion as the Trial Court was of the view that in the facts and circumstances of the case, it would not be wise and proper to pass an order of injunction. The appeal was preferred on 9<sup>th</sup> December, 2011, more than one year from the date of the order. The Trial Court refused to allow the said application on the ground that the appellants could not demonstrate that the statements made in the said petition for not being able to file the application for condonation of delay was genuine. The discretion exercised by the First Appellate Court in refusing to allow the application for condonation of delay does not appear to be perverse. Moreover, by the passage of time, the appeal has also lost its force. The suit might have been disposed of in the meantime.

However, in the meantime if the suit is pending, we direct the learned Civil Judge (Junior Division), 2<sup>nd</sup> Court, Serampore, Hooghly to dispose of the Title Suit No.85 of 2008 as expeditiously as possible and preferably within a period of eight months from the date of commencement of the Trial without granting any unnecessary adjournment to either of the parties unless it is unavoidable.

The appeal, accordingly, stands dismissed.

However, there shall be no order as to costs.

We direct the Registrar Administration (L&OM) to communicate this order to the learned Civil Judge (Junior Division), 2<sup>nd</sup> Court, Serampore, Hooghly for information and doing the needful.

**(Uday Kumar, J.)**

**(Soumen Sen, J.)**