

17.05.2023

**SAT 61 of 2023
With
CAN 1 of 2023**

**Sri Joga Singh
Vs.
Smt. Shashi Bala Sinha**

Mr. Soumabho Ghosh
Mr. Sidhartha Sharma
Mr. Rishav Dutt
Mr. S. Ganguli
Mr. R. Bhattacharjee

... ... for the appellant

Ms. Shalini Mukherjee

... ... for the respondent

We admit the Second Appeal. Since the point involved is very short and glaring we proposed to dispose of it immediately, so that the main controversy between the parties is resolved in the appropriate forum.

We are of the view that the learned Judge of the Court below has grossly failed to exercise his jurisdiction and has thereby committed a gross error of law in not under the facts and circumstances of the case condoning the delay of 58 days of the appellant in preferring the appeal. The delay in our opinion was marginal and there was enough medical grounds which would have at least impelled the learned Judge to give the benefit of doubt to the appellant and hold that there was sufficient cause for this delay.

For these reasons this appeal is allowed. The impugned judgement and order dated 10th February, 2023 is set aside.

The application under section 5 of the Limitation Act before the learned Court below is also allowed.

The learned Judge of the Court below is requested to hear the First Appeal on merits as early as possible preferably not beyond 31st December, 2023.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)