

Item-4. 22-02-2023 SAT 2037 of 2001
CAN 2 of 2014 (old CAN 5770 of 2014)
CAN 3 of 2019 (old CAN 8329 of 2019)
sg Ct. 8 CAN 4 of 2023

Amal Mondal
Versus
Sankari Mondal & Ors.

Mr. Falguni Bandyopadhyay, Adv.
Mr. Debabrata Mondal, Adv.
Ms. Sreetama Neogi, Adv.

...for the appellant

In Re: CAN 4 of 2023 and CAN 3 of 2019 (old CAN 8329 of 2019)

There is a delay of 110 days in preferring the application for restoration of the appeal.

We directed service of copy of the application for condonation of delay upon the respondents. It seems that the appellant has simply slept over the matter as the conduct of the appellant would show that he was not interested in the hearing of the second appeal. Almost 20 years no attempt was made to move the second appeal until this matter was listed at the instance of the Court by directing the Registry to list matters which had remained unattended for long.

The learned Counsel for the appellant has submitted that in the application for condonation of delay in filing the application for restoration could not be served upon the respondent as all the envelopes sent to the respondents/appellants have been reiterated with the postal remark 'left'. In fact, this appeal was dismissed for default on 2nd April, 2019 and the application for restoration was filed on 31st January, 2023.

We could have dismissed this appeal on other grounds

but since we have decided to hear the matter on merits in order to find out whether it involves any substantial question of law, we allow the application for condonation of delay in preferring the restoration application and the application for restoration of the appeal.

The appellants states that the delay is of 101 days to which we do not agree. The computation is erroneous.

In Re: SAT 2037 of 2001 and CAN 2 of 2014 (old CAN 5770 of 2014)

We have heard the learned counsel for the appellant. In a suit for cancellation of a deed of gift admittedly executed by an illiterate person was dismissed by the trial court and the said decision was reversed by the first appellate court. We have carefully read the judgements of the trial court as well as the first appellate court.

In reversing the judgment, the first appellate court has taken into consideration the fact that Netai the donor was an illiterate person. The LTI in the impugned deed was attested by the appellant. It further appears from the evidence that Netai was mentally and physically unfit for the last 12 years prior to the execution of the impugned deed. The grounds on which the deed was challenged were misrepresentation of fact and fraud committed by the appellant in relation to the execution of the deed. The plaintiffs are the legal heirs of Netai. The plaintiffs alleged that taking advantage of the illiteracy of their father and on a representation being made that the said document would be required to avail loan, his LTI was obtained from the said document without the knowledge of the legal heirs of Netai.

When the plaintiff was able to establish the illiteracy of Netai and his physical ailment, the onus to establish that Netai had executed the said deed with full knowledge and understanding is upon the appellant. Curiously, the deed written in vernacular language did not mention that the contents of the deed were read over and explained to Netai before execution, which ordinarily is done by the Deed Writer in order to obtain the consent of the executor with regard to the contents of the document. In other words, the mind of the executor should carry with the document which he is supposed to execute. On the teeth of such evidence, it was incumbent upon the appellant to produce the Deed Writer or other convincing evidences. It is submitted that the Deed Writer possibly was unavailable by the time trial commenced. However, we could not find any reflection of such submission in the record of the case. There was no evidence to show that the Deed Writer was unavailable and hence could not be produced. There was no evidence of any attending witnesses who could have proved due execution and mental alertness of the donor at the time of execution of the said deed.

On such consideration, we do not find any reason to interfere with the order passed by the first appellate court in reversing the judgment of the trial.

The appeal fails. However, there shall be no order as to costs.

CAN 2 of 2014 (old CAN 5770 of 2014) is, accordingly, dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)

