

S/L 67
16.01.2023
Court. No. 12
Suwayan

CO 1683 of 2019

Dwarika Nath Maji
Vs.
Dilip Maji & Anr.

Mr. Prasanta Kr. Banerjee

...for the petitioner.

The affidavit-of-service is filed today be kept with the record.

Learned Advocate for the revisionist is present.

In spite of service none appeared on behalf of the opposite parties. Accordingly, the instant revisional application is taken up for hearing in absence of the opposite parties.

In this revisional application the revisionist has challenged the Order No. 9 dated 22.01.2019 as passed by the learned District Judge, Hooghly in Misc. Appeal No. 54 of 2017 whereby and where under the appellant's application under Section 5 of the Limitation Act was disallowed by the said Court. The appellant failed aggrieved and, thus, preferred the instant revisional application.

In support of the instant revisional application it is contended that learned 1st Appellate Court though in her impugned order observed that a linent approach is to be taken while disposing of the petition under Section 5 of the Limitation Act but for the reason best known to her, she has observed that on account of the lackadaisical attitude of the present revisionist the condonation of

delay as prayed for cannot be considered favourably. It is contended that the learned 1st Appellate Court ought to have visualize the predicament of the said appellant in filing the said appeal within the statutory period of limitation on account of his illness.

Heard the learned Advocate for the revisionist/petitioner at length. Perused the impugned order. In considered view of this Court, learned Trial Court while passing the impugned order ought to have considered the present revisionist was reasonably prevented to file Misc. Appeal No. 54 of 2017 within a period of limitation on account of his illness.

In view of such, the instant revisional application is allowed. As a result the impugned Order No. 9 dated 22.01.2019 as passed by the learned District Judge, Hooghly in Misc. Appeal No. 54 of 2017 stands hereby set aside. Consequently the petition under Section 5 of the Limitation Act as filed in Misc. Appeal No. 54 of 2017 stands hereby allowed.

Consequently, the Misc. Appeal No. 54 of 2017 is restored to its original file and learned 1st Appellate Court is hereby directed to fix a date for hearing of the Misc. Appeal No. 54 of 2017 on the point of admission within a fortnight from the date of communication of this order.

With the aforementioned observation the instant revisional application being CO 1683 of 2019 is disposed of.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)