

09.01.2023
SL-08
Ct.32
(S.R.)

FAT 140 of 2022
Irfan Nizami
v.
Md. Naim
with
CAN 1 of 2022

Mr. Debasis Sur
Mr. Angshuman Patra
... for the appellant.

Mr. Srinjay Das
Mr. Arvind Kumar Singh
... for the respondent.

The present appeal has been preferred challenging the judgment and decree dated 29th April, 2015 passed by the Learned Judge, City Civil Court, XIth Bench, Calcutta in Title Suit No.1267 of 2003. In connection with the appeal an application under Section 5 of the Limitation Act being CAN 1 of 2022 has been preferred.

Mr. Sur, learned advocate appearing for the appellant submits that the appellant’s father, namely, Nizamuddin Ahmed, expired on 13th February, 2020. Due to such unfortunate event and as the appellant was also suffering from serious ailments for a substantial period of time, he was not in a position to take immediate steps for filing the appeal. To recover from such ailments, the appellant also incurred huge medical expenses and due to extreme financial stringency, he was prevented from filing the appeal in time. The period of delay also stands intervened by a period lost due to the pandemic. Thus, the delay in preferring the appeal was neither deliberate

nor intentional and in view thereof, the same may be condoned and the appeal may be heard on merits. Let the death certificate of the appellant's father, as produced, be kept on record.

He further submits that the appellant has sincerely contested the proceedings without any laches before the learned Court below. The delay which has occurred is not totally attributable to the appellant and from the sequence of facts it cannot be said that the appellant has not acted *bonafide*.

Per contra, Mr. Das, learned advocate appearing for the respondent submits that the suit preferred by the appellant was dismissed on contest in the month of April, 2015. Since then no steps were taken by the appellant to prefer the present appeal till the year 2022. The appellant's father expired on 13th February, 2020. There is no explanation as to why the appellant did not take any step for preferring the appeal till the death of his father. The appellant has also failed to produce any document in support of his contention that he was suffering from serious ailments and had to incur huge medical expenses. The appellant has simply slept over his rights. From the sequence of facts it is explicit that the delay, which has occurred, is attributable to the appellant and he has in fact adopted dilatory tactics. His conduct, as such, does not warrant exercise of any discretion in his favour.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

From the report of the Additional Stamp Reporter it appears that even after excluding the period lost due to the pandemic, there had been a delay of more than five years in preferring the appeal. Such delay may be condoned if sufficient cause is shown but in a case of gross inaction there is no reason why the respondent should be exposed to a time-barred appeal. The only explanation that has been furnished for the delay is that the appellant could not take appropriate steps for the death of his father and for his own ailments. However, no document has been produced by the appellant as regards his ailments. The suit was dismissed in the month of April, 2015 and the appellant's father expired on 13th February, 2020. There is no explanation as to why the appellant waited since 2015 till the death of his father to prefer the present appeal. The appellant has thus been thoroughly negligent and his conduct lacks *bonafide*. He has adopted dilatory tactics and the inordinate delay, which has occurred, is totally attributable to him.

For the reasons discussed above, we are not inclined to exercise any discretion in favour of the appellant and to condone the delay. The application for condonation of delay being CAN 1 of 2022 is, accordingly, rejected and the appeal being FAT 140 of 2022 is

dismissed on the ground of delay.

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

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)