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Ct. No. 04

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S.A.T. 84 of 2023

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**Smt. Parul Ponda & Ors.
Vs.
Sri Ramapada Das & Ors.**

**Mr. Sounak Bhattacharya,
Mr. Sounak Mondal.
... for the appellants.
Ms. Malyasree Maity.
... for the respondents.**

The instant appeal has arisen from a judgement and order dated 25th April, 2023 passed by the learned District Judge, Purba Medinipur in Title Appeal No. 20 of 2022; by which an application for condonation of delay of 73 days in preferring the First Appeal is rejected. Since the rejection of an application under Section 5 of the Limitation Act tantamount to rejection of First Appeal itself, the present Second Appeal has been filed.

On the first day when the instant appeal was moved, we directed the service of notice upon the respondents bearing in mind the scope of the instant appeal, which is restricted to an order dismissing an application under Section 5 of the Limitation Act, and upon being served the respondents are appearing before us.

The learned Counsel for the respondents opposes the appeal, as according to her there is no sufficient grounds made out for the purpose of condoning the delay. She further submits that it is inconceivable and improbable that the signature of the patient is incorporated in the Medical Certificate, which creates a cloud on the genuinity of the said certificate.

We are unable to comprehend the aforesaid submissions advanced by the respondents for the

simple reason that the Medical Certificate was issued by the Doctor after the patient undergone treatment and in order to authenticate the fact that the same person was treated by him, the signature of the patient is attested by the said Doctor.

Be that as it may, we do not find any substance in the aforesaid submissions, but we feel that we must deal with the findings returned by the Court of Appeal below in rejecting the application under Section 5 of the Limitation Act.

Astonishingly the learned District Judge, Purba Medinipur, disbelieved the certificate issued by the Doctor, who is having private practice, as he was of the view that the patient should always be treated in the Government hospital.

Such notion, in our opinion, cannot be countenanced, as the patient have a preferential right to choose the Doctor for his treatment and may take the service of private hospital instead of Government hospital. There is no law, which mandates the Medical Certificate to be issued by a Doctor posted in a Government Hospital; when all the Medical Practitioners have acquired same degree and have registered themselves with the Indian Medical Association.

We do not find any justification in making distinction between a Medical Practitioner doing a private practice and a Medical Practitioner posted in the Government hospital. Furthermore it is absolutely a personal choice of a person to be treated in a Homeopathy branch of treatment or a Allopathy branch of treatment. The personal perception or notion of a Judge should not be reflected in the judgement so as to make it sacrosanct, but must decide the matter in the perspective of law applicable in this regard and the

system which is in place. Any aberration to a treatment under the Homeopathy system cannot be a ground for raising a doubt on the genuinity of the Medical Certificate, as the treatment should have been done in the Allopathy system.

We thus do not find that the way in which the application for condonation of delay has been dealt with by the Court of Appeal below is in consonance with the law and, therefore, the same needs interference.

Accordingly, the order no. 4 dated 25th April, 2023 is hereby set aside. The application for condonation of delay filed before the Court of Appeal below is hereby allowed. The Title Appeal No. 20 of 2022 is restored to its original file and number.

The Court of Appeal below is requested to dispose of the said appeal as expeditiously as possible.

With the above observations, the instant appeal being SAT 84 of 2023 and the connected application are disposed of.

(Harish Tandon, J.)

(Ajay Kumar Gupta, J.)

