

27 06.06.23

Ct. No. 04

akd

S.A.T. 220 of 2016
CAN 1 of 2019 (Old No. CAN 2445 of 2019)

Sukman Sk. & Ors.
Vs.
Gunahar Bewa & Ors.

Mr. Tapas Kumar Bhattacharya,
Mr. Avirup Bhattacharya,
Mr. Bishnu Prosad Singha.
... for the appellant.

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal.
... for the respondent nos. 1-7.

By consent of parties the appeal is taken up for hearing at the stage of admission.

The instant appeal arises from an order no. 13 dated 11th April, 2016 passed by the learned District Judge, Malda in Partition Appeal No. 27 of 2014; whereby and whereunder an application for condonation of delay in filing the First Appeal has been rejected.

Admittedly there was a delay of 27 days in filing an appeal under Section 96 of the Code of Civil Procedure. The Appellate Court held that the medical certificate annexed to the application cannot be accepted, as it does not bear the signature of the patient nor it has been attested by the concerned Doctor.

Though it is stated that it is a settled law that the medical certificate should bear the signature of the patient attested by the Doctor concerned, but we do not find any reflection of such law in the impugned order. There is no finding returned in the impugned order that the medical certificate is ingenuine nor any attempt is shown to have been made to call the Doctor as witness, if the Court is of the view that the genuinity and authenticity of the medical certificate is shrouded with

cloud.

It appears to us that the Court has taken a strict and pedantic view in dealing with an application for condonation of delay instead of finding out the sufficiency in the cause shown by the appellants in the application for condonation of delay. The Court must encourage the litigation to be decided on merit rather than to put an end taking pedantic approach in finding a fault of the appellant in not preferring the appeal within the statutory period.

We are not unaware of the proposition of law that the length of delay is immaterial; what is required to be seen is the sufficiency of cause shown in the application for condonation of delay. It is a specific stand of the appellants that after obtaining the certified copy of the impugned judgement and decree passed by the Trial Court one of the appellants suffered illness and was under the medical attention. Medical certificate is also annexed with the said application showing the nature of illness and, therefore, it is an ardent duty of the Court to consider the same in a more liberal manner than to adopt a technical approach in finding fault in the medical certificate and disbelieve the statement of the appellants.

Time and again the Court have adopted liberal and lenient approach in order to achieve the disposal of the case on merit. The Court must not be swayed by the argument of the other side that each day's delay is required to be explained and the medical certificate should not be relied on.

Though technically speaking the explanation appended to Order XXVI Rule 1 of the Code of Civil Procedure may not be applicable, yet the principle akin thereto may be adopted in order to find out the sufficiency in the explanations offered by the litigant in

relation to his illness. We find that the approach of the Court of Appeal Below is not proper and needs interference by this Court.

Accordingly, the order no. 13 dated 11th April, 2016 passed by the District Judge, Malda in Partition Appeal No. 27 of 2014 is hereby set aside. The delay in filing the said appeal beyond the statutory period is hereby condoned. The application for condonation of delay is allowed.

The Court of Appeal below is requested to make endeavour to dispose of the appeal as expeditiously as possible and shall not grant unnecessary adjournment to either of the parties unless necessitated by unavoidable and unforeseen circumstances.

With the above observations, the appeal and the connected application are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)