

SAT 196 of 2014
with
I.A No. CAN 1 of 2014(Old CAN No. 9804 of 2014)

Gitali Roy & Ors.
Vs.
Arup Kumar Shaw & Anr.

The appeal is of the year 2014.

The appeal appeared in the warning list on 29th November, 2022 with a clear indication that the same shall be transferred to the regular list on 5th December, 2022, since then the matter is appearing in the list.

It appears from the record that Mr. S. Muohopadhyay, learned counsel, appeared on behalf of the appellants on 17th November, 2021 and prayed for an adjournment. The matter was adjourned till 24th November, 2021 with the observation that the defects would be cured in the mean time.

The department has filed a revised report stating that the defects pointed out by the stamp reported dated 7th June, 2014 have not yet been removed. Be that as it may, we propose to consider the appeal whether any substantial question of law is involved in this appeal.

The appellate decree dated 26th March, 2014 affirming the judgment and decree passed by the trial court on 29th September, 2012 in an Ejectment suit is the subject matter of challenge in this second appeal.

We have carefully read the judgment of the trial court as well as the first appellate court.

The plaintiffs filed a suit for eviction on the ground of default, sub-letting and the damage caused to the suit property.

The appellants failed to establish any of the aforesaid grounds. The first appellate court rejected the appeal on the ground that there was a delay of around 110 days and the first appellate court has given some reasons for not accepting the explanation offered for delayed filing of the appeal. We are in agreement with the first appellate court that the appellants could not establish sufficient case for the said delay in filing the appeal. Be that as it may, it appears that the appellants are not interested to proceed with the appeal.

In our view, the reason given for not accepting the appeal beyond the period of limitation may not be arbitrary as the court cannot exercise its power mechanically. Moreover, the appellants are not represented and no attempt has been made to cure the defects and argue the matter.

On such consideration, we do not find any reason to admit the second appeal. The appeal accordingly fails.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage along with CAN 9804 of 2014.

There will be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)

