

16.08.2023
Court No. 19
Item No.04
CP

C.O. 2882 of 2022

Sri Arun Kumar Biswas @ Dulal Biswas
Vs.
Sri Tushar Kanti Roy & ors.

Ms. Debjani Ghosh Roy (Deb)
... for the Petitioner.

Ms. Sohini Chakraborty
Mr. Kaustav Bagchi
Mr. Debayan Ghosh
Ms. Priti kar
.....for the opposite party no. 1.

The petitioner is the defendant in Title Suit No. 245 of 2016. An order of temporary injunction was passed in respect of the suit property. Aggrieved, the petitioner preferred Misc. Appeal No. 30 of 2022 along with an application under Section 5 of the Limitation Act for condonation of delay. The delay was of 65 days and the ground for delay was illness of the defendant. The said application was not filed in proper form. The application did not contain a proper affidavit. Accordingly, the learned Additional District Judge, 2nd Court, Barrackpore rejected the application under Section 5 on the ground of the same being defective. Aggrieved, this revisional application is filed.

In my opinion, the defect was a technical one and the learned court below ought to have given an opportunity to the petitioner to file the application in proper form, upon withdrawing the defective one.

The order impugned dated August 30, 2022 passed by the learned Additional District Judge, 2nd Court, Barrackpore in Misc. Appeal No. 30 of 2022, is set aside. The petitioner is given an opportunity to file an application in the proper form praying for condonation of delay.

It is made clear that the period which has been consumed during the pendency of the said application and till the disposal of the revisional application shall be available to the petitioner in terms of Section 14 of the Limitation Act.

The application under Section 5 of the Limitation Act shall be filed within a week from date, with proper explanation. The learned court below shall allow the opposite parties to file the written objection, if any. Thereafter, the application for condonation of delay shall be disposed of on its own merits.

On the outcome of the said application, the court shall act and proceed in accordance with law.

The revisional application is disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)