

10.10.2023.
Item no. 35.
Court No.19
ap

C.O. No. 3054 of 2023

**Sk. Emajuddin & Ors.
Versus
Sk. Abdul Motaleb & Ors.**

Mr. Masud Karim,
Mr. Abdul Amanullah Khan,
Mr. Sekh Shanawaz Ali,
Mr. Abhijit Chatterjee.

...For the petitioners.

The order dated August 3, 2023 passed by the learned District Judge, Paschim Medinipur in Misc. Appeal No. 173 of 2022, is under challenge.

Aggrieved by the order of injunction passed in Title Suit No. 71 of 2022, Misc. Appeal No. 173 of 2022 was filed.

Learned Advocate for the petitioners submits that although there was a delay of two months sixteen days in filing the Misc. Appeal, in the application under Section 5 of the Limitation Act, the opposite parties had specifically stated that the delay was only for 25 days.

The ground taken by the appellants/opposite parties was that the order of injunction was passed behind their back. They were not aware of the impugned order. Since their learned Advocate had not communicated such order to them, the defendants were not able to file the Misc. Appeal within the period

of limitation. Upon coming to know of the impugned order, the certified copy was applied for. The same was handed over on September 27, 2022 and on the very next day, the appeal was filed.

The learned lower appellate court found that the order of injunction was passed ex parte. The evidence of PW-1 had made it clear that the learned Advocate for the defendants was not available and he did not conduct the case. The learned lower appellate court found that there was no inordinate delay in filing the appeal and sufficient cause has been made out for the condonation of delay caused.

Learned Advocate for the petitioners submits that the order impugned suffers from illegality as the learned lower appellate court recorded that there was delay of 25 days, although there was a delay of two months and sixteen days in filing the appeal.

Having perused the application for condonation of delay, it appears that the defendants were not aware of the impugned order. The learned Advocate did not communicate the order. They changed their learned Advocate and immediately upon obtaining the certified copy of the order, the Miscellaneous Appeal was filed.

In my opinion, whether there was a delay of 25 days or delay of two months and sixteen days, the period is inconsequential in the facts and circumstances of the present case. A litigant cannot suffer for the mistake of his learned Advocate.

Moreover, even assuming that there was a delay of two months and sixteen days such period of delay cannot be considered to be inordinate. The opposite parties took immediate steps when they came to know about the order impugned, and preferred the Miscellaneous Appeal. The learned lower appellate court rightly condoned the delay.

With the aforesaid observations and discussions, the instant revisional application is dismissed.

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

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Sarkar, J.)