

Ct.
No.
652

15
akb

18.10
2023

C.O. 3598 of 2016
Narugopal Ghosh @ Biswanath Ghosh
-Versus-
Narayan Ghosh

Md. Harun All-Rashid
Md. Majnu Sk

...For the Petitioner

Opposite party is not represented.

This application under Article 227 of the Constitution of India has been preferred against order No. 10 dated 1st June, 2016 passed by the learned Additional District Judge, Lalbagh, Murshidabad in Misc. Appeal, being No. 29 of 2015.

By the impugned order learned Court below was pleased to reject the appellant's prayer for condonation of delay filed under Section 5 of the Limitation Act in filing the Misc. Appeal being No. 29 of 2015..

The petitioner's contention is that the petitioner filed one preemption case, being Misc. Case No. 63 of 2004 against the respondent/opposite party herein in respect of the suit property. The Trial Court after hearing the said Misc. Case was pleased to dismiss the same on 23rd April, 2014.

The petitioner contented that the petitioner was present on the date of final hearing of the said Misc. Case, being No. 63 of 2004 and the concerned law clerk instructed the petitioner to meet with his learned Lawyer after getting the information about the fate of hearing through postal letter. Thereafter, petitioner waited for a long time and on 9th December. 2014 the petitioner came to his Lawyer's Chamber and for the first time the petitioner came to know from the law clerk that his preemption case, being Misc. Case No. 63 of 2004 was dismissed.

On hearing this, the petitioner in consultation with his learned Lawyer instructed to obtain certified copy of the impugned order and the learned Lawyer for the petitioner asked him to come after two and half months when the certified copy will be made ready for delivery to them. The petitioner when next time came to his Lawyer, he expressed his difficulty in filing the appeal and advised him to appoint another Lawyer for preferring the appeal. Due to inaction and negligence on the part of the erstwhile learned Lawyer and the law clerk as above the delay of 312 days has caused for preferring the Misc. Appeal. He further contented that there are no laches and/or negligence on the part of the petitioner in filing the appeal in time and as such the petitioner filed the said application under Section 5 of the Limitation Act for condonation of delay. Petitioner further contended that he was all along diligent and vigilant in prosecuting his case.

Md. Harun All-Rashid, learned Counsel appearing on behalf of the petitioner further submits that the petitioner is a poor village person having no knowledge about legal affairs and the petitioner after getting the certified copy of the order on the same day filed the Misc. Appeal. Learned Court below disbelieved the cause of delay explained by the petitioner and thereby caused miscarriage of justice. Accordingly, Mr. Rashid has prayed for setting aside the order impugned and to condone the delay in filing the Misc. Appeal.

I have perused the order impugned and considered the submissions made on behalf of the petitioner. It appears that the Court below while disposing the said application observed that the petitioner herein has not mentioned the

name of the law clerk or the Advocate for whose alleged latches the delay was caused in preferring the appeal and furthermore, the petitioner has not examined the said law clerk or the Advocate to substantiate the allegation. The Court below refused to rely the oral submission in support of the allegation and concluded that mere making statement in the application under Section 5 of the Limitation Act, does not ipso facto prove the sufficient cause for condonation of delay, particularly when the delay is inordinate.

It is trite law that legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act, 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. This is based on sound judicial principle as laid down by Apex Court in ***Collector, Land Acquisition, Anantnag Vs. Katiji***, reported in AIR 1987 SC 1353 that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merit after hearing the parties. What should be the approach of the Court while deciding applications for condonation of delay has been indicated in many cases that the words “sufficient cause” should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant. In the present context there is hardly anything to show that appellant has resorted to any dilatory tactics or there is any deliberate approach in making delay. It is settled law that in fact in every such cases there can be some lapse on the part of the litigant concerned but that alone is not enough to turn down his plea and to shut the door against him unless his

explanation appears to be mala fide and/or has been put forth as part of a dilatory strategy to gain time deliberately. The approach should be justice oriented rather than to find faults of the appellants in the explanation, as has been done in the present context.

Having considered the same, the order impugned dated 1st June, 2016 passed in Misc. Appeal, being No. 29 of 2015 is hereby set aside. The revisional application, being C.O. 3598 of 2016 is allowed.

The delay in filing the aforesaid Misc. Appeal being Misc. Appeal No. 29 of 2015 is condoned.

The Court below is directed to dispose of the Misc. appeal on merit without being influenced by any observation made herein preferably within a period of 12 (twelve) weeks after reopening of the Court after Puja vacation.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)