

05.01.2023
SL No.63
Court No.8
(gc)

SAT 606 of 2008
CAN 1 of 2008 (Old No: CAN 9611 of 2008)

Srimanta Kumar Saha
Vs.
Susanta Kumar Saha & Ors.

This matter appeared in the Warning List of 29th November, 2022 with a clear indication that this matter shall be transferred to the Regular List on 5th December, 2022. Since then the matter is appearing in the list. The appellant has due notice of the matter. The appellant is not represented.

The appeal is arising out of the judgment passed by the First Appellate Court in rejecting the application under Section 5 of the Limitation Act in preferring an appeal passed on 5th April, 1993. It appears that in a suit for partition, the preliminary decree was modified by Order No.248 dated 5th April, 1993. The plaintiff aggrieved by the said modification preferred a civil revision in the High Court in C.O. No.674 of 1994. It is an admitted fact that even at the time of filing of said revisional application, there was a delay and a petition under Section 5 of the Limitation Act was also filed for condonation of delay. The said revisional application was dismissed on 30th June, 2000 and thereafter a recalling application was filed being CAN No.1276 of 2006 arising out of C.O. No.674 of 1994. The said application was

dismissed on 6th April, 2006 recording that in spite of giving sufficient opportunity, the appellant did not file any requisite for issuing notice to the opposite parties.

The First Appellate Court was of the view that the aforesaid conduct does not allow the litigant to take advantage of Section 14 of the Limitation Act as the conduct manifests lack of due diligence.

We do not find any reason to take a different view.

The second appeal, accordingly, stands dismissed at the admission stage.

In view of dismissal of the second appeal at the admission stage, the application also stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)