

06-04-2023
Court No.2
Sh/50.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

C.O. 14 OF 2023

**Sunil Chandra Brman & Anr.
Vs.
Birendra Nath Debsarma.**

Mr. Anirban Banerjee,
Ms. Madhushri Dutta.
..For the Petitioner.

This is a civil revisional application filed under Article 227 of the Constitution of India.

From the endorsement made by the Registry it appeared that no caveat was lodged.

The order impugned in this application is dated February 2, 2021 passed by the Additional District Judge, Mathabangha, Coochbehar, whereby and where under the appeal preferred by the petitioner, arising out of a proceeding under Section 8 of the West Bengal land Reforms Act, 1955 was dismissed on the ground of delay in filing the appeal after the expiry of the statutory limitation period of 30 days.

On scrutiny of the impugned order it appeared that there is a marginal delay of 28 days in preferring the appeal.

The right of appeal as provided under the Statute being a statutory substantive right, the same cannot be defeated for the procedural laches in filing the appeal after expiry of the limitation period and more so when the delay is marginal in nature.

In view of the above, for substantive justice the said order impugned dated February 3, 2021 stands set aside and quashed. The appeal being **Misc**

Appeal No.02/2020 is directed to be admitted condoning the said delay of 28 days subject to all other requirements being complied with by the petitioner/appellant in accordance with law.

The Learned Trial Court is directed to consider the appeal on merit in accordance with law and shall make all endeavour to dispose it of within a period of the one year from the date of communication of this order.

It is made clear that this Court has not gone into the merits of the appeal in any manner whatsoever.

On the above observations and terms, this application, **C.O.14 of 2023 stands allowed**, without any order as to costs.

(**ANIRUDDHA ROY, J.**)