

31.07.2024
Piya
ct no. 30
sl no. 02

SA 240 of 2009
With
CAN 5 of 2023
With
CAN 6 of 2024

Sri Birendra Narayan Roy
Vs.
Sri Kamal Kanti Pal

Mr. Dyutiman Banerjee
Mr. Salil Kr. Maity
Ms. Pinki Shah
Mr. Vishal Mallick

.....For the Appellant

Mr. Subrata Santra
Ms. Gargi Dhang

..... For the Respondent

1. The present appeal has been preferred against the judgment dated **8th day of February, 2008** and the Decree dated 22.02.2008 passed in Title Appeal No. 8 of 2005 by the Additional District Judge, 1st Court, Purba Medinipur at Tamluk affirming the judgment dated 9th May, 2000 and the Decree dated 24.05.2000 passed in Title Suit No. 11 of 1987 by the Civil Judge (Senior Division) at Tamluk.
2. By the judgment dated 09.05.2000, the trial court, held as follows:-

“Title Suit No. 11 of 1987

Dated: 09.05.2000

ORDERED

That the suit be and the same is decreed on contest with cost against the defendant.

The plaintiff do get a decree for specific performance of contract against the defendant.

The defendant is directed to accept the balance consideration money of Rs. 24,000/- (Rupees Twenty Four thousand) from the plaintiff amicably and to execute and register the deed of sale in respect of the suit property described in the 'ka' schedule of the plaint at the costs of the plaintiff within 2(two) months hereof, failing which the plaintiff will be at liberty to out the decree in execution and to get the deed of sale in respect of the 'Ka' schedule property of the plaint executed and registered in his favour on depositing Rs. 24,000/- in Court and on payment of the incidental costs for the deed by way of execution through court. In such case, the defendant will be liable to all the costs of such execution also.

D/C. by me.

**Sd/-
Civil Judge (Sr. Division),
Tamluk, Purba Medinipur.”**

- 3.** During the pendency of the second appeal, **the sole respondent**/plaintiff Kamal Kanti Pal, expired on **24.10.2021.**
- 4.** The appellants through their learned Advocate were informed about the said death, vide letter dated **05.05.2022.**
- 5.** Vide CAN 5 of 2023, the prayer for substitution has been made on **24th February, 2023.**
- 6.** Vide an application being CAN 6 of 2024, a prayer for condonation of delay under Section 5 of the limitation has been made. It is submitted that though there has

been a delay of 487 days from the date of death, there is a **delay of only 294 days from the date of knowledge.**

7. The only ground of delay has been attributed to ‘over sight’ on the part of the appellants/petitioners and their advocates.

8. In *Pathapati Subba Reddy (Died) By L.Rs. & Ors. vs. The Special Deputy Collector (LA), in SLP (Civil) No. 31248 of 2018, decided on 08.04.2024*, the Supreme Court held:-

“26. *On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:*

- (i) *Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) *A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) *The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) *In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) *Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as,*

where there is inordinate delay, negligence and want of due diligence;

- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*
- (vii) Merits of the case are not required to be considered in condoning the delay; and*
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”*

9. The suit in the present second appeal was initiated in the year **1987. 37 years** have passed. In spite of this long pending litigation, the appellants are not diligent in the present case. **Their only ground as ‘oversight’ for condonation of 294 days inspite of knowledge shows their actual intention.** The intention prima facie is, to only delay the whole proceedings to frustrate the claim of the respondent/plaintiff who succeeded before the trial court and also in the court of first appeal.

10. The cause shown for the delay of 294 days is a case made out in a **very casual manner of ‘over sight’** and thus not ‘sufficient’, in any manner whatsoever.

11. There has been in ordinate delay (294 days), negligence, want of due diligence and such conduct should not be encouraged, also in the interest of justice and ‘justice’ in a case of this nature, requires that the delay should not be condoned.

12. Condoning such conduct of the appellant will be sheer, abuse of the process of law/court.
13. Accordingly, the prayer of the appellant in CAN 6 of 2024 for condonation of delay stands rejected and consequently CAN 5 of 2023 praying for substitution of the sole respondent also stands rejected.
14. Thus, the appeal being Second Appeal No. 240 of 2009 **abates** in respect of the sole respondent and is accordingly **disposed of**.
15. All connected applications, if any, stand disposed of.
16. Interim order, if any, stands vacated.
17. Copy of this order be sent to the learned trial Court being the Civil Judge (Sr. Division), Tamluk and the Court of Additional District Judge, 1st Court, Tamluk, Purba Medinipur.
18. Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)