

**21. 05.2024**

**Sl. No.19.**

**Ct. No. 652.**

**s.g.**

**CO/905/2020**

**Prakash Kumar Chowdhury  
Vs.  
Shri Ashok Kumar Chowbey & Ors.**

Mr. Syed Nurul Arefin,  
Mr. Rahul Singh,  
Ms. Rashmi Binayak,  
Mr. S. Agarwal,  
....for the petitioner.

Mr. Vivek Kumar Tripathi,  
Mr. P.P. Mukhopadhyay,  
....for the o.p. nos. 1,2 and 3.

Being aggrieved and dissatisfied with the order no. 126 dated 20<sup>th</sup> December, 2019 passed by the learned Additional District Judge, 3<sup>rd</sup> Court, Howrah in Misc. Appeal no. 285 of 1998, present application has been preferred.

The petitioner's contention is that one Kunja Behari Chowbey, the predecessor-in-interest of the opposite party/applicant took out a proceeding before the Thika Controller being case no. H-5 of 1992 praying for recording his name as thika tenant in relevant records in respect of disputed property under Section 6 of the Calcutta Thika Tenancy Act, 1981. Learned Thika Controller by an order dated 22.12.1992 rejected the said application. Being aggrieved by that order, aforesaid Kunja Behari filed Misc. Appeal no. 29 of 1993 before the learned District Judge Howrah and the appeal was allowed and the matter was remanded to the Thika Controller for fresh adjudication. Thika Controller again by order dated 22.02.1998 rejected the claim of Kunja Behari.

Another appeal was preferred against the said order being Misc. Appeal no. 285 of 1998 and the Appellate Court by its judgement and order dated 03.06.2003 set aside the order of Thika Controller and held him as a thika tenant.

Being aggrieved by the said order of the Appellate Court, predecessor-in-interest of the petitioner herein filed an application under Article 227 of the Constitution of India, being CO no. 1550 of 2003, which was allowed to be withdrawn with liberty to file review application before the Appellate Court. The predecessor of the petitioner had filed review application but the said review application was dismissed by the Appellate Court on 30.06.2006. The predecessor of the petitioner accordingly preferred an application under Article 227 of the Constitution before this Court being CO no. 3086 of 2006 assailing the said order contending that the title between the parties had been finally decided in Title Suit No. 21 of 1949, wherein Kunja Behari was declared as premises tenant under the petitioner/respondent and accordingly proceeding before the Appellate Court was barred by the res-judicata.

Said C.O. 3086 of 2006 was disposed of by this High Court on 19.9.2006 and in the said order this High Court specifically observed as follows:-

*"Accordingly, in disposing of the revisional application, direction is given to the learned Appellate Court to re-hear the review application in Misc. Appeal No. 285 of 1998 on the issues raised in this revisional application.*

*It may be noted that in disposing of the revisional application, this court has not gone into the merits of the contentions of the parties to the suit. All*

*the questions have been left open for final decision by the appellate Court. The review application is required to be disposed of by December, 2006."*

In pursuance of such order of remand the Appellate Court took up review petition for hearing afresh and by the order dated 22.12.2006 dismissed the same both on merits as well as on the technical ground observing that the said application was not in proper form and the same was barred by limitation.

Being aggrieved by the said order petitioner again preferred the revisional application before this High Court being CO no. 4063 of 2010. This Court while disposing of the said revisional application had given liberty to the petitioner herein to file fresh review application in proper form along with application under Section 5 of the Limitation Act before the Appellate Court within a month from the order and thereby set aside the impugned order dated 22.12.2006 passed in Misc. Appeal no. 285 of 1998 to the extent it dismissed the review petition on the ground that the decree in Title Suit no. 21 of 1949 affirmed in Title Appeal no. 285 of 1995 related to a different premises. Said order was passed by this Court on 20<sup>th</sup> July, 2011 and it appears that the fresh review application along with application under Section 5 of the Limitation Act was filed on 18.8.2011 in compliance of the order passed by this Court in CO no. 4063 of 2010.

The learned Court below had taken up the said fresh application for review along with Application under section 5 of Limitation Act and by the impugner order dated 20<sup>th</sup> December 2019 was pleased to held that the cause of delay in filing review application is not at all properly and sufficiently explained. He

further observed that in the Application under Section 5 of the Limitation Act, dated 18.8.2011, the days of delay has not been mentioned and at the time of hearing of the case when it was pointed out, the petitioner by filing an application under Sections 153 and 151 prayed an amendment in the Section 5 application inserting the days of delay of 1707 days, which was filed on 7.01.2019 and accordingly Court below held that the delay condonation prayer made by the applicant is not convincing. He further held that the petitioner was not diligent in filing the application for condonation of delay and there is lack of bona fides and inaction and negligence on the part of the petitioner which has caused hardship upon the opposite party and as such he did not find sufficient cause for condonation of delay and accordingly rejected the petitioner's application under Section 5 of the Limitation Act along with their application filed under Sections 153 and 151 seeking amendment of Application filed under Section 5 of the Limitation Act.

Learned Counsel appearing on behalf of the opposite party Mr. Vivek Kumar Tripathy submits that the order impugned is absolutely justified in view of the fact that this Court directed the petitioner to file fresh review application as well as application under Section 5 for condonation of delay which they did not comply by filing the same in proper form and thereafter they tried to fill up lacuna by filing amendment application. However, from amendment Application it is clear that it involves delay of 1707 days in filing the application. Accordingly the impugned order does not call for interference invoking jurisdiction under Article 227 of the Constitution of India.

I have considered the submissions made by both the parties. From the observations made by this High Court while disposing the Civil Revisional application being no. 3086 of 2006 as well as CO 4063 of 2010 it appears that the object of passing order to give a fresh look necessitated because the Appellate Court did not consider certain aspects which needs to take a relook, rather than disposing the same on the ground of technicalities.

On going through the spirit of the order passed by this Court on 20.7.2011 in CO no. 4063 of 2010 was that review petition will have to be disposed of on merit after considering the contention of the parties. It was never the spirit of the order that the Court will be obsessed with the technicalities, if any, involved with the issues. Substantial justice can never be defeated on the ground of technicalities even if technicality involved with the issue.

Moreover, I find that the judgement passed in CO no. 4063 of 2010 was on 20.7.2011 and the fresh application for review, along with application under Section 5 of the Limitation Act was filed on 18.8.2011, which is within one month as directed by this Court in CO 4063 of 2010.

So petition under section 5 of Limitation Act ought not to have rejected by saying that since it does not mention the period of delay so it is not in proper form or present application cannot be treated to have filed within time. It must be remembered that in every case of delay 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 the explanation smack of *malafides* or it is put forth as part of a dilatory strategy. (see **Perumon Bhagvathy Devaswom,**

***perinadu village Vs. Bhargavi Amma and others*** reported in **(2008) 8 SCC 321**). Here no such allegation has been levelled against petitioner.

In view of above Impugned order no. 126 dated 20.12.2019 is hereby set aside. The application filed under Section 5 of the Limitation Act by the petitioner in terms of the order passed in C.O. 4063 of 2010 is hereby allowed. The Court below is directed to dispose of the fresh review application on merit after giving opportunity to the parties to contest without being influenced by any observation made herein, preferably within a period of 12 weeks from the date of communication of this order.

Accordingly, CO being no. 905 of 2020 is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

**(Ajoy Kumar Mukherjee J.)**