

02.01.2024
Sl. No.7(DL)
srm

C.O. No. 1247 of 2022

Tapati Das & Anr.

Versus

Ranjit Chakraborty & Ors.

Mr. Sounak Bhattacharya,
Mr. Shaunak Mondal,
Mr. Alminhaz Karim

...for the Petitioners.

Mr. Ranjit Jaiswal,
Mr. Nandalal Pradhan

...for the Opposite Parties.

The decree-holders have preferred the revisional application praying for setting aside the order dated April 5, 2022 passed by the learned Additional District Judge, Bolpur, Birbhum in Title Appeal No.45 of 2019.

The learned Advocate submits that the order impugned suffers from the following irregularities:

- (a) The appeal was admitted, although the same was filed belatedly, without any prayer for condonation of delay.
- (b) The appeal was in the nature of a second appeal which could not have been filed before the same court. Title Appeal No.26 of 2019 was dismissed on the ground of non-joinder of parties.

(c) The order of dismissal of the appeal on the ground of non-joinder of the parties was a decision of the appeal on merits. The proper course of action for the judgment-debtors would have been to file a second appeal before the High Court.

Learned Advocate for the judgment-debtors submits that Title Appeal No.26 of 2019 was defective. The said appeal was accompanied by an application for condonation of the delay in filing the appeal. The learned court while rejecting the appeal on the ground of non-joinder of some of the parties in the memorandum of appeal, rejected the appeal on a technical ground, with liberty to the judgment-debtors to file a fresh memorandum of appeal, in accordance with law.

However, on perusal of the grounds for condonation of delay, the learned court was of the view that the delay was likely to be condoned. Thus, while admitting the subsequent appeal being Title Appeal No.45 of 2019, the learned court was not further required to go into the question of condonation of delay, as the delay had been condoned in Title Appeal No.26 of 2019.

Having heard learned counsel for the respective parties, this Court is of the view that the contention of Mr. Bhattacharya that a second appeal before the High Court

should have been filed, is not accepted. Title Appeal No.26 of 2019 was dismissed on the technical ground of the memorandum of appeal being defective. The decree drawn up by the learned Civil Judge (Junior Division), 1st Court, Bolpur, Birbhum, on September 29, 2018 in Title Suit No.6 of 1992, contained the names of other parties who were not incorporated in the memorandum of appeal. The names of the parties in the decree and the cause title of the memorandum of appeal, did not tally. The learned Judge was of the view that the appeal could not be admitted and the prayer for admission was rejected with liberty to the appellants to take proper steps. The certified copies of the judgement and decree were returned to the appellants upon submission of photocopies, to enable the appellants to cure the defect and file a fresh memorandum of appeal. Thus, the appeal was not rejected on merits, but the prayer for admission was rejected with liberty to the appellants to take proper steps.

Subsequently, the appellants rightly took proper steps by filing the memorandum of appeal with all the parties, as per the decree. However, the said memorandum of appeal was not accompanied with an application for condonation of delay which should have been the proper course of action as the application for condonation of delay which was filed in

connection with Title Appeal No.26 of 2019 was also defective in its formal sense, as parties had been left out. The opinion of the court that condonation of delay was likely to be allowed, is not an order condoning the delay. The learned lower appellate court, mistakenly held that delay was condoned by the learned Judge in the order dated April 5, 2022. The delay ought to have been explained from the passing of the judgment and decree till the date of filing of the appeal in the proper form.

Undoubtedly, the period consumed in the meantime, when the defective appeal was before the court and till the decision was given by the court, are available grounds for condonation of delay, apart from the grounds which were already mentioned in the earlier application, but such grounds ought to have been made out in a proper application for condonation of delay in filing the subsequent appeal.

Under such circumstances, the order dated April 5, 2022 is set aside. The judgment-debtors are granted liberty to file an application for condonation of delay in filing Title Appeal No.45 of 2019, taking all the grounds including the ground with regard to the pendency of the defective appeal before the learned lower appellate court as also pendency of the revisional application before this Court. The learned court below shall decide the application for condonation of delay on

its own merits, on the basis of the pleadings and thereafter proceed to decide the fate of the application and the prayer for admission of the appeal.

As it appears that the decree was passed sometime in 2018 and the title suit is of 1992, the learned lower appellate court shall proceed expeditiously.

Accordingly, the revisional application is disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)