

17-12-2024
Item no.13
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO No.1524 of 2023
Jinna Mondal
-vs-
Mst. Sakila Bibi

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup Haldar
Mr. Anirban Saha Roy ...for the petitioner

Ms. Madhumita Patra ...for the opposite party

1. This revisional application has been filed assailing an order dated April 27, 2023 passed by the learned Additional Judge, 1st Court, Hooghly in Misc. Appeal No.39 of 2008 wherein the learned judge directed that both the application under section 5 of the Limitation Act, 1963 dated August 25, 2022 and the appeal would be heard together.
2. Learned counsel for the petitioner has drawn my attention to an order dated June 21, 2022 passed by a coordinate Bench of this court in CO No.1362 of 2022 as well as Order No.42 dated August 2, 2013 passed in the appeal (Misc. Appeal No.39 of 2008) and also the section 5 application dated August 25, 2022.
3. Heard learned counsel appearing for the petitioner and the opposite party.
4. From the records it appears that the coordinate Bench of this court in CO No.1362 of 2022 by its order dated June 21, 2022 provided liberty to the petitioner/decreed holder to raise all such points based on technicalities before the court where the

Misc. appeal was pending and the learned judge would resolve the dispute at the time of final hearing of the appeal after giving opportunity of hearing to the parties.

5. From Order No.42 dated August 2, 2013 it appears that the learned judge held that at the time of filing of the appeal, one application under section 5 of the Limitation Act was also filed by the appellant for condonation of delay on April 22, 2008, but due to oversight, that application was not disposed of. Therefore, after five years of proceeding of the appeal, the condonation application in filing the appeal would be deemed to have been condoned and the appeal also be deemed to have been admitted.
6. It is informed that the condonation application was filed for condoning the delay of 273 days but that was not disposed of due to oversight and that was the reason before the court to hold that the “delay is deemed to have been condoned”.
7. Such order passed by the learned judge, in my view, is absolutely unknown to the law of the land. That issue has been raised at the instance of the petitioner/opposite party before the appellate court and the learned appellate court kept the petition pending for disposal along with the appeal.
8. In my considered opinion, the issue raised in the application dated August 25, 2022 shall have to be disposed of prior to hearing and disposal of the appeal, as it involves the condonation of delay of 273 days in filing the appeal.
9. In the aforesaid view of the matter, the order dated April 27, 2023 hereby stands set aside.
10. Learned Additional District Judge, 1st Court, Hooghly is directed to hear out and dispose of the application dated August 25, 2022 prior to hearing

of the appeal, within 15 days from the date of reopening of the court after the ensuing Christmas vacation.

11. With the above directions, the revisional application (CO No.1524 of 2023) stands disposed of.
12. All parties are to act on the server copy of this order duly downloaded from the official website of this court.
13. Certified copy of this order, if applied for, shall be made available to the parties.

[Bibhas Ranjan De, J]