

29.04.2024
Sl. No.23(DL)
srm

C.O. No. 1834 of 2022

Kedar Nath Shaw

Versus

Shiv Parvathi Jana Kalyan Samity & Ors.

Mr. Kaustav Chandra Das

...for the Petitioner.

Ms. Nabamita Kapat

...for the Opposite Party No.1.

1. The revisional application arises out of an order dated February 6, 2021 passed by the learned Judge, 10th Bench, City Civil Court at Calcutta, in Misc. Case No.2265 of 2019 arising out of Title Suit No.3133 of 1994.
2. By the order impugned, the learned court allowed an application under Section 5 of the Limitation Act. The application was filed in connection with the Misc. case, seeking setting aside of an *ex parte* decree. The learned court was of the view that the delay had been sufficiently explained and each and every days delay was not required to be explained. A liberal approach should be adopted by the learned court while deciding whether the delay should be condoned or not. The delay caused due to failure on the part of the learned Advocate to inform

the opposite parties about the dates fixed, was sufficient ground for allowing the application under Section 5 of the Limitation Act.

3. Several decisions of the Hon'ble Apex Court were relied upon by the learned court while arriving at the decision that the delay should be condoned as the explanation given by the opposite party No.1 was sufficient and reasonable.
4. Mr. Das, learned Advocate appearing on behalf of the petitioner/landlord submits that the expression "sufficient cause" should be strictly construed and mere allegation against the learned Advocate, would not be adequate compliance of the requirement of the statute to show 'sufficient cause' for condonation of delay.
5. The learned Advocate for the opposite party No.1 submits that the delay had been explained and when the learned trial judge had found on facts that satisfactory reasons had been assigned as to why the delay had occurred in filing the application under Order IX Rule 13 of the Code of Civil Procedure, this Court under Article 227 of the Constitution of India should not interfere with the factual findings.

6. Having heard learned Advocates for the respective parties, this Court is of the view that the order passed by the learned trial judge was a discretionary order. The learned judge was satisfied on the causes shown that a reasonable ground for condonation of the delay had been made out in the application. The application for condonation of delay should be allowed liberally and the court should avoid adopting a pedantic approach.
7. Under such circumstances, this Court does not find any reason to interfere with the discretionary relief granted by the learned trial judge upon appreciation of facts, law and pleadings of the parties.
8. The contention of Mr. Das that without bringing the learned Advocate to the dock and without examining the said Advocate, the delay could not be condoned, is not acceptable. These are issues which have to be dealt with by the learned court at the stage when the main application being Misc. Case No.2265 of 2019 is heard and decided.
9. The revisional application is, thus, disposed of without any interference.
10. There shall be no order as to costs.

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

(Shampa Sarkar, J.)