

16.07.2024
(D/L-11)
Ct.-19
(Susanta)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 2469 of 2024

Tarak Chandra Arash & Ors.

-Vs-

Nirmal Karmi & Ors.

Mr. Ayanava Bhattacharyya,
... For the Petitioners.

Mr. Dipanjan Datta,
Mr. Subhojit Chowdhury, For the O.P. Nos 2, 3, 4 & 14.

The opposite parties have suffered an ex-parte decree and aggrieved thereby, have filed the connected Title Appeal No. 50 of 2018 pending before the 1st Court of learned Additional District Judge at Serampore, District-Hooghly.

The Appeal Court below, by the order no. 29 dated April 23, 2024, has condoned the delay in filing the said appeal.

The petitioners, being the respondents of the said appeal are challenging the said order by the instant application under Article 227 of the Constitution of India.

Mr. Ayanava Bhattacharyya, learned advocate for the petitioners submits that the only explanation offered by the appellants to justify the delay in filing of the said appeal was that they had entrusted defendant no. 4 to take steps in the suit on their behalf but due to some family problem, the said defendant could not take such steps, as a result the suit was decreed ex-parte, which the appellants came to learn subsequently but it would appear from the record that the said defendant no. 4 never appeared in the said suit, besides there are other defendants but there is no explanation as to why the said defendants did not appear and contest the said suit.

Mr. Dipanjan Datta, learned advocate for some of the opposite parties, submits that the length of delay is very short, as such the appeal may be decided on its merits.

Heard learned advocate for the parties, perused the materials-on-record.

The sufficiency of the explanation is relevant not the length of the delay.

It appears from the record that the defendant nos. 1 to 9 had entrusted the defendant no. 4 to look after the suit on their behalf but the appellants are required to explain as to why the other defendants did not take steps for preferring the appeal within the time but such explanation is lacking.

To afford an opportunity to the appellants to make good of the said shortfall in the explanation, the order impugned is set aside.

The Appeal Court below is requested to decide the application for condonation of delay afresh in accordance with law, after giving opportunity to the parties to adduce cogent evidences in support of their respective cases.

The Appeal Court below is requested to dispose of the said application as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

C.O. 2469 of 2024 is disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)