

19.02.2024
Ct. No. 19
Sl. No.06
Cp

C.O. No. 2289 of 2022

Jagabandhu Singha Rajak
Vs.
Debasish Singha

Mr. Aniruddha Chatterjee
Mr. Debabrata Roy
Mr. Debrup Choudhury

.... for the Petitioner.

Mr. Subhas Chandra Atha
Ms. Payel Paramanik

.....for the opposite party.

1. This revisional application arises out of an order dated July 14, 2022, passed by the learned District Judge at Bankura in Misc. Appeal No. 03 of 2019. The Misc. Appeal arose out of Misc. Case No. 19 of 2016. Misc. Case No. 19 of 2016 was an application under Section 8 of the West Bengal Land Reforms Act. The same was decreed ex parte. The opposite party suffered an order of pre-emption. The opposite party preferred Misc. Appeal No. 03 of 2019 along with an application for condonation of delay of more than 530 days. The learned District Judge, Bankura condoned the delay and allowed the application for condonation of delay with reasons. The Misc. Appeal No. 03 of 2019 was registered.
2. Mr. Chatterjee, learned advocate appearing on behalf of the petitioner/pre-emptor submits that the learned court had proceeded illegally and with material

irregularity. To substantiate such contention, Mr. Chatterjee points out to the following defects in the order impugned:-

- a) The order was passed without considering the evidence on record.
 - b) The order was passed without the opposite party having proved either his illness or the fact that sufficient time had been consumed in searching for the missing son-in-law.
 - c) No explanation for 530 days delay was available from the application for condonation.
 - d) The application for condonation only mentions that the opposite party and his brother were looking for the missing son-in-law of the brother of the opposite party, who went missing since 2006. The decree was passed in 2017. The fact with regard to the missing son-in-law was also unacceptable, as there was neither any police complaint nor any missing diary.
3. The learned advocate for the opposite party submits that the decree was passed ex parte. The decree suffers from various irregularities. First and foremost, the pre-emption application was belated and not maintainable in law. As the opposite party had good grounds for success in the appeal, the delay was rightly condoned by the learned court below and the

learned court had accepted the evidence which was put forward by the opposite party.

4. Having considered the rival contentions of the parties, this court finds that the learned court had perused the evidence as also the grounds showing cause as to why the delay had taken place and held that the delay of 564 days in filing the appeal, was sufficiently explained.
5. The court found that the explanation as to why appropriate steps could not be taken at the appropriate time i.e. looking for the missing son-in-law, illness etc., were believable causes. The illness of the opposite party was accepted by the learned court, from the evidence on record. The court held that the meaning of the word 'sufficient cause', should be interpreted according to its relevance to the context in which it has been used and should be examined from the view of the reasonable standard of a cautious man. Although the court found that the grounds may be difficult to accept, but the court held that the situation was not in favour of the opposite party. The opposite party was ill and an important family member had been missing since long. There was no lack of bona fide or wilful inaction on the part of the opposite party in filing the appeal. Denial of the opportunity to contest the appeal, would be harsh. Thus, the

application for condonation of delay was allowed upon imposition of cost of Rs.10,000/-.

6. The court has gone through the evidence, as it appears from the order impugned. The High Court should not sit in appeal over such finding of facts. Although the opposite party could not remember whether any FIR was lodged with regard to the missing son-in-law of his brother, it appears that the Pradhan had issued a missing certificate and proved the same in evidence. Secondly, Debasish Singha and Shibasish Singha had deposed and they did not contradict each other. The brothers had categorically deposed that the family was going through a huge crisis as the son-in-law of the elder brother was missing and could not be traced.
7. In a middle class family, residing in a small town, such an incident can shatter the entire social structure and mental wellbeing of the family. This aspect has been proved in evidence and the learned court had held so.
8. I do not find any reason to upset such finding. The opposite party's deposition has been perused in great detail by this court. It appears that the opposite party had been consistent in his examination-in-chief and cross-examination with regard to the sufferings the family went through when the son-in-law went missing. The opposite party had categorically stated that he was also ill. When he came to know after his

illness about the ex parte order in the pre-emption case, he approached his learned advocate who was previously engaged. The learned advocate refused to work on behalf of the opposite party. Again, he went to another advocate who was also unwilling. Ultimately, Shri Arup Shit, an advocate of Bakura, instructed him to file an appeal along with the application for condonation of delay. It had been categorically stated that the family was undergoing huge mental crisis on account of which follow up action and proper instructions could not be given to the learned advocate.

9. When the learned court has accepted such evidence, when the evidence is consistent and unshaken, when the Pradhan has deposed in favour of the missing son-in-law, this court does not find any reason to interfere with the order impugned.
10. The learned appellate court shall proceed with the Misc. Appeal No. 03 of 2019 on its own merits, without being influenced by any observations made hereinabove.
11. The revisional application is accordingly disposed of. There shall be no order as to costs.

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

(Shampa Sarkar, J.)