

January 30, 2024
Sl. No.13
Court No.19
s.biswas

CO 4291 of 2023

Swapan Ghosh
vs.
Pradip Kumar Ghosh

Mr. Prasad Bhattacharyya
Mr. Aritra Kumar Thokdar

... for the petitioner

The petitioner is aggrieved by the order dated August 30, 2023 passed by the learned Additional District Judge, Fast Track 1st Court, Kandi, Murshidabad, in Misc. Appeal No.21 of 2019. The learned court rejected the miscellaneous appeal, upon coming to the conclusion that the learned trial judge was correct in dismissing the application filed under Section 5 of the Limitation Act, in connection with the application under Order 9 Rule 13 of the Code of Civil Procedure.

The miscellaneous appeal arose out of an order passed in Misc. L.R. 24 of 2016. The miscellaneous case was filed by the petitioner seeking for setting aside the ex parte preemption decree dated April 28, 2017, upon condonation of delay. The learned trial judge rejected the application for condonation of delay. According to the facts discussed by both the courts below, the wife of the petitioner received summons. The petitioner approached one Sri Somnath Das, learned advocate in Kandi court to contest the case. The petitioner contended that the

lawyer made him sign a couple of papers and assured that the petitioner would be informed about the case at regular intervals. That the petitioner was ill for a long time and was unable to attend the court during the intervening period of one year.

On coming to know of the decree, the petitioner approached the learned advocate on February 19, 2018 for necessary information. The petitioner alleges that the learned advocate informed him that the preemption case had been fixed for hearing. Another learned advocate who was later engaged, informed the petitioner that the suit had been decreed ex parte on April 28, 2017.

Thereafter, the petitioner filed an application under Order 9 Rule 13 of the Code of Civil Procedure, along with an application for condonation of delay. The said application for condonation of delay was taken up by the learned trial judge. The same was rejected on August 29, 2019. The petitioner adduced evidence as PW1 and examined one Golam Jitria (PW2). A medical certificate was marked as Exhibit-1. The opposite party, namely, Pradip Kumar Ghosh adduced evidence.

The learned trial court, upon appreciation of the evidence and the deposition, came to the conclusion that the evidence of PW1 and PW2 were contradictory. While PW1 (petitioner) deposed that

he was admitted in the nursing home of the PW2, PW2 deposed that he did not have any nursing home.

Moreover, the learned trial court held that the PW1 stated that the PW2 was an allopathic doctor and used to have a chamber at Nagar and also had a nursing home, in which, the PW1 was admitted, but the PW2 in his cross-examination stated the contrary. The PW2 stated that he did not have any nursing home and the patients would leave after treatment. The learned court found that there was no registration number on the prescription of the doctor.

Under such circumstances, the learned trial court did not find sufficient reasons for condoning the delay of one year in filing the application under Order 9 Rule 13 of the Code of Civil Procedure. The ground of illness was disbelieved.

A misc. appeal from the said order was preferred, being Misc. Appeal No.21 of 2019. The learned lower appellate court analyzed the findings of the learned trial judge and the arguments of the parties. The petitioner's contentions that the petitioner was unaware of the proceedings as the learned advocate did not inform him and that he was also unwell for a period of one year, were disbelieved. The expression "sufficient cause" as stated in various

judgments of the Hon'ble Apex Court was analysed, considered and examined with reference to the materials produced and the pleading.

In such backdrop, the evidence on record were considered. It was found that the petitioner had used his illness as a ground for the delay and in support of which he had filed a certificate issued by PW2 (Doctor). The certificate was marked as Exhibit 1. No prescription was issued in favour of the petitioner in support of the continuous treatment since February 16, 2017. PW2 in his evidence, claimed that his registration to practice was from Odisha, but he failed to mention his registration number in the certificate.

The PW2 admitted that although the petitioner was suffering from high blood pressure, he did not advise the petitioner any further tests, for further diagnosis. No symptoms of any kind were mentioned. PW2 also admitted that the petitioner was not admitted in any nursing home. No medical reports for prolonged treatment were produced as evidence. The learned lower appellate court was of the view that the evidence of PW2 would lead to the conclusion that he was a quack doctor and did not have any registration. The certificate which was produced as evidence was created for the purpose of the proceedings. The contention of the petitioner

that he was admitted in a nursing home, was disbelieved as the PW2 himself stated that he did not have any nursing home.

Under such circumstances, on perusal of the facts as stated in the application, the court disbelieved the petitioner and was of the opinion that the petitioner had got a fake medical certificate, issued by a quack doctor, to build up a case of illness, in order to explain the delay.

Under such circumstances, this court is not inclined to interfere with the order passed by the learned courts below and is also not inclined to go into the factual findings of the learned court below. This court holds that when there are findings with regard to the fake medical certificate and false statements made before the learned courts by the petitioner, with regard to his illness, no indulgence can be shown to the petitioner.

The revisional applications stands dismissed. When both the courts, upon appreciation of the materials on record, arrived at the conclusion that the petitioner had failed to show sufficient cause for condonation of delay and the causes shown were not believable, this court cannot sit over such factual findings as an appellate forum.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)