

OD-1

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APDT/11/2023
WITH
CS/12/2020
IA NO: GA/1/2023, GA/2/2023

RAM NATH SINGH AND ORS.
VS
JASPAL SINGH CHANDHOK AND ORS.

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 11th November, 2024.

Appearance:
Mr. Deepnath Roy Chowdhury, Adv..
...for the appellants.

Mr. Swatarup Banerjee, Adv.
Ms. Somali Mukhopadhyay, Adv.
...for the respondents.

Re.: IA No.GA/1/2023

The Court: This is an application for condonation of delay of 223 days in preferring the appeal. The affidavits have been exchanged. It is the contention of the applicants that they are the members of the respondent no.6 and are flat owners. There was initially divergence of opinion with regard to the legal remedy to be pursued as a result whereof there is some delay in preferring this appeal.

We have heard learned Counsel for the parties.

The main objection seems to be that the explanations offered that the appellants could not arrive at consensus with regard to proper remedy could not be a ground for condonation of delay. However, we are satisfied with the explanations offered having regard to the fact that the appellants are not conversant with the law and they need to depend upon the advice of the learned Advocate. In a proceeding, a litigant has to rely upon the Advocate in view of the fact that the order is appealable and ultimately the litigant has preferred an appeal with a prayer for condonation of delay.

We are of the opinion that the delay has been sufficiently explained and, accordingly, we allow the application for condonation of delay of 223 days in preferring the appeal. Delay is condoned.

Accordingly, the application being IA No.GA/1/2023 is allowed.

The appeal shall be registered if it is otherwise in form.

The suit as framed against the Kolkata Municipal Corporation is not maintainable in view of lack of service of notice under Section 586 of the Kolkata Municipal Corporation Act, 1980. It is being argued that the suit is instituted under Section 38 of the Specific Relief Act, 1963 and no relief is being prayed for. We are unable to accept the said submission in view of clear allegation of collusion as pleaded in paragraph 27 of the plaint and in any event the prayer (d) in the plaint will not give a complete relief to the plaintiff for which the suit may otherwise fail.

Under such circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge. However, at this stage, it is

submitted that the plaintiff shall not proceed with the Kolkata Municipal Corporation.

Leave is granted to amend the plaint in order to delete the Kolkata Municipal Corporation from the array of parties.

We make it clear that whether the suit would be held to be bad for non-joinder of a necessary party by reason of deletion of KMC would be for the Court to decide, if any, objection is taken in this regard. We further make it clear that we have not gone into the merits of the dispute.

The appeal being APDT/11/2023 and the application being IA No.GA/2/2023 are disposed of.

(SOUMEN SEN, J.)

(APURBA SINHA RAY, J.)