

C.O. 587 of 2025

Kartik Chandra Mandal
-versus-
Uttam Kumar Maity & Ors.

Mr. Ramkrishna Roy.
... For the petitioner.

This application is at the instance of the appellant in Misc. Appeal No. 22 of 2024 challenging an order being Order No. 8 dated 12th November, 2024 passed by the learned District Judge, Purba Medinipur. By the order impugned the application under Section 5 of the Limitation Act praying for condonation of delay of about 10 years in preferring an appeal against the preliminary decree was rejected.

The learned advocate appearing for the petitioner submits that the delay occasioned due to wrong advice given by the learned advocate engaged by the petitioner before the learned trial court. By placing reliance upon the decisions of the Hon'ble Supreme Court in the case of **State of West Bengal Vs. The Administrator, Howrah Municipality and others** reported in **AIR 1972 SC 749** and **Sheo Raj Singh (deceased) through LRs. Vs. Union of India** and another reported in **2024 (1) Civil LJ 507** he submits that the application under Section 5 of the Limitation Act is to be liberally construed as the length of delay is not material and what is relevant is the sufficiency of the cause.

It appears from the record that the preliminary decree was passed in the suit for

partition being Title Suit No.91 of 2003 which was subsequently renumbered as Title Suit No. 78 of 2013 on 8th April, 2014. After the preliminary decree was passed the petitioner filed an application claiming the rest half share of the suit plot in their favour by way of a separate preliminary decree and the learned trial judge passed a preliminary decree in his favour on 14th July, 2015.

The plaintiffs/ opposite parties herein filed an application for appointment of a partition commissioner to effect the allotment of the property in terms of the preliminary decree. After the partition commissioner submitted the report, the petitioner filed the written objection on 8th March, 2018. After a full-fledged hearing such report was accepted by the learned trial judge and a final decree was passed on 24th January, 2024.

Being aggrieved against the final decree the petitioner preferred an application under Article 227 of the Constitution of India being C.O. 703 of 2024 which was disposed of by an order dated 22nd April, 2024. Thereafter the petitioner filed the instant appeal challenging the preliminary decree dated 8th April, 2014. The learned trial judge after taking note of the decision in the case of Sheo Raj Singh (supra) observed that the petitioner failed to make out any sufficient cause for condonation of delay. The delay is inordinate one. In Sheo Raj Singh (supra) the Hon'ble Supreme Court observed that while sitting in appeal over discretionary order of the High Court the appellate authority can interfere only when such exercise of discretion is clearly wrong but not when the order of appeal is not right. In the said reported decision the order

condoning the delay was the subject matter of consideration before the Hon'ble Supreme Court.

In the case of Administrator, Howrah Municipality (supra) the Hon'ble Supreme Court held that if a party had acted in a particular manner on the wrong advice given by his legal advisor, he cannot be held guilty of negligence so as to disentitle the party to plead sufficient cause under Section 5.

The question as to whether the petitioner suffered on account of wrong advice given by his legal advisor is a finding of fact. Mere allegation against the learned advocate without making any attempt to prove the same cannot be said to be sufficient for condoning the inordinate delay of 10 years.

This Court finds that the learned trial judge assigned cogent reasons for rejecting the application under Section 5 of the Limitation Act. This Court is, therefore, not inclined to interfere with such exercise of discretion which does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

This Court sitting in Article 227 of the Constitution of India cannot render a finding on such factual aspect.

For such reason, this Court is not inclined to interfere this matter. Accordingly, C.O. 587 of 2025 is dismissed without any order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)

