

14.11.2025
Ct. No. 30
SL No. **47**
MKP

CO 2738 of 2022

Pradip Kumar Panda & Anr

Vs.

Srimatya Lakshmi Rani Pradhan And Ors

Mr. Amit Baran Dash
Ms. Ankana Sarkar

.....for the Petitioner

1. The revisional application has been preferred against order no. 32 dated 02.07.2022 passed by the Learned Additional District Judge, 1st Court, Contai, Purba Medinipur in Misc.Appeal No.11 of 2009.
2. Vide the said order under challenge, the Learned Appellate Court being the Learned Additional District, 1st Court, Contai, dismissed the appeal on 12.08.2013.
3. The petitioner then filed an application for setting aside of the order of dismissal with an application under Section 5 of the Limitation Act on 25.03.2015.

4. The Learned Appellate Court was not satisfied with the grounds of delay as stated by the petitioner therein. On the date of hearing the application under Section 5, the opposite parties were not present, in spite of being duly served. So the application under Section 5 was considered ex parte on evidence.
5. Learned Appellate Court on the finding that there is discrepancy relating to the nature of the delay narrated in the application and the absence of proper reasons was pleased to reject the application under Section 5. The petitioners now pray for setting aside of the order dated 12.08.2013, as the same was not passed in accordance with law.
6. Considering the said facts and relying upon the judgments of the Supreme Court in ***Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy & Ors. in Civil Appeal Nos.8183-8184 of 2013, decided on September 13, 2013, and Pathapati Subba Reddy (Died) by L.Rs. & Ors. vs The Special Deputy Collector (LA), in Special***

Leave Petition (Civil) No. 31248 of 2018, decided on April 8, 2024, this Court in the interest of justice is of the view that the said order dated **02.07.2022** should be set aside as the cause shown for delay is sufficient.

7. Thus the order dated 02.07.2022 is set aside, on condonation of delay, by allowing the application under Section 5 of the Limitation Act.
8. It appears that the vide the order dated 12.08.2013 Misc.Appeal was dismissed for default.
9. Considering the facts and circumstances, the order dated 12.08.2013 is also set aside and the Misc.Appeal is restored to its file and number.
10. The Appellate Court is directed to dispose of the Misc. Appeal on merit within 60 days from the date of communication of this order, hearing the parties on due notice.
11. The revisional application is **disposed of.**
12. Interim order, if any, stands vacated.

13. Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul). J]