

04.03.2025
sayandeep
Sl. No. 05
Ct. No. 01

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

FMAT 25 of 2024

With
CAN 1 of 2024

Sanghamitra Das

-Versus-

Sri Avijit Sen

Mr. Prantick Ghosh

Mr. Hillol Saha Podder

Mr. Prasad Bhattacharyya

..... for the appellant

Mr. Amit Saha

Mr. Rishav Das

.....for the respondent

The order No. 37 dated 29.10.2024 passed by the District Judge, Darjeeling dismissing an application under Section 5 of the Limitation Act in miscellaneous case No. 15 of 2023 is the subject matter of challenge in the instant appeal. An application for grant of probate was contested by the appellant by filing a caveat and the affidavit in support thereof. The said proceeding was converted into a contentious cause and a direction was passed upon the objectors to file their pleadings.

The learned advocate was engaged in support of the same and the matter was fixed from time to time. Subsequently, it appears that the said probate proceeding is decreed *ex parte* on December 5, 2020 thereby granting the probate in favour of the

respondent. A proceeding under Order IX Rule 13 of the Code of Civil Procedure along with the application for condonation of delay is filed by the appellant objector which gave rise to the registration of miscellaneous case No. 15 of 2023.

It is specifically averred that the appellant who is the resident of Dumdum, Kolkata and contesting the proceedings at Siliguri has to depend upon the learned advocate and from time to time the information is passed on the progress thereof. It is further averred that the Covid-19 struck globally in the month of March, 2020 which continued till January, 2022 as a result whereof, there was a complete lack of communication with the learned lawyer but it was all along understood that as and when the occasion arise, the said learned lawyer would communicate to the petitioner so that he would appear before the Court. He thus pleads that he had no knowledge that the matter was posted *ex parte* and ultimately the probate was granted *ex parte*.

Undeniably, the probate application was allowed during the pandemic when the entire globe faced the restriction in the movement and even the pace of life was restricted to some extent. Even the Court proceedings were not conducted with full complement of the Judges manning the Courts and

there was restricted hearing in order to meet the exigencies. It appears that the application for probate was allowed during the second wave which the entire globe experienced severely as there was more casualty of life. We had given to understand that the learned lawyer who was entrusted also passed away and there was a complete discord in this regard.

We are conscious of the proposition of law that the Court should take a pragmatic view in determining an application under Section 5 of the Limitation Act and should avoid the pedantic view in this regard. However, in the garb of leniency, the Court should not permit a recalcitrant litigant to get away with the rigor of Section 5 of the Limitation Act. It is no longer *res integra* that the length of delay is immaterial. What should weigh to the Court is the sufficiency of the cause. In absence of sufficient cause, the delay of shorter period may not be condoned by the Court but if the Court finds that the litigant was prevented by sufficient cause, the inordinate delay deserves to be condoned. Any other interpretation assigned to the words “sufficient cause” appearing in the provision would frustrate the legislative intent underlined the aforesaid provision and, therefore, Court should strike an equilibrium into the rights of the parties.

As indicated hereinabove, the application for probate was decided while the pandemic still engulfed the globe and there was a restrictive movement in this regard. There has been a delay after coming to know of the said Judgment and taking into account the overall explanation offered therein, we feel that other side can be compensated by imposing costs.

We, therefore, set aside the impugned order.

The application under Section 5 of the Limitation Act is hereby allowed.

Since the averments made in Section 5 is identical and similar to the averments made under Order IX Rule 13 of the Code of Civil Procedure, the Trial Court is requested to pass necessary order thereupon.

The appeal is allowed subject to the payment of costs assessed at Rs. 50,000/- to the respondent/propounder within two weeks from date.

In default, this order shall stand automatically recalled and the appeal shall be treated as dismissed.

(Harish Tandon, J.)

(Apurba Sinha Ray, J.)