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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/1886/2024

ABHIJIT HAZARIKA
S/O KIRON HAZARIKA,
RESIDENT OF DADHARA BAMUN CHUBURI, PO TEZPUR, MOUZA BHAIRABPAD, DIST SONITPUR, ASSAM 784001

VERSUS

BASANTA KUMAR RAI
S/O GAJEN CHANDRA RAI,
MURAHTETALI, PO TEZPUR, MOUZA BHAIRABPAD, DIST SONITPUR, ASSAM 784001

Advocate for the Petitioner : MR. B CHAKRAVARTY, MS. A LALA

Advocate for the Respondent : MR. S SAHU, MS. B CHOUDHURY

Linked Case :

ABHIJIT HAZARIKA

VERSUS

BASANTA KUMAR RAI F

Advocate for : MR. B CHAKRAVARTY
Advocate for : appearing for BASANTA KUMAR RAI F

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

04.11.2026

1. Heard Mr. B Chakravarty, the learned counsel for the applicant. Also heard Ms. B Choudhury, the learned counsel for the sole respondent.

2. This application under Section 5 of the Limitation Act, 1963, has been filed by the petitioner seeking condonation of delay of 1713 days in preferring the connected regular second appeal, wherein the judgment and decree dated 03/06/2017 and 04/06/2017 respectively, passed by the court of learned Civil Judge, Senior Division, Sonitpur, in TA No. 15/2012, has been impugned.

3. The learned counsel for the applicant submits that the appellant filed a title suit, which was registered as TS No. 53/2005 for eviction of the opposite party from the suit premises on the ground of defaulter of payment of rent as well as *bona fide* requirement. The said suit was dismissed by the trial court. Being aggrieved by the judgment of the trial court, the present applicant preferred an appeal before the court of learned Civil Judge, Senior Division and the said appeal was registered as TA No. 15/2012. However, the said appeal was also dismissed by the first appellate court on 03/06/2017.

4. The learned counsel for the applicant submits that due to wrong advice to the applicant by his engaged counsel, instead of preferring a second appeal under Section 100 of the CPC against the judgment of the first appellate court, the present applicant preferred a revision petition under Article 227 of the Constitution of India. The said revision petition was registered as CRP No. 22/2018.

5. The said revision petition was disposed of by a Coordinate Bench of this court on 22/03/2024 by allowing the present appellant to withdraw the said revision petition with liberty to avail appropriate remedies as available under the law. While allowing the withdrawal of the CRP No. 22/2018, the court also observed that the appellant on the basis of legal advice given to him have diligently and *bonafidely* pursued the CRP No. 22/2018.Hence, the period from 28/12/2017 till 22/03/2024 was directed to be excluded while computing the period of limitation in respect of any subsequent filing by the present appellant impugning the judgment dated 03/06/2017 passed in TA No. 15/2012.

6. The learned counsel for the opposite party has submitted that since liberty has been granted to the present appellant to approach appropriate forum by the Coordinate Bench, hence, she may not object in condoning the delay.However, apart from the period excluded by the Coordinate Bench, some additional delay has also been occurred. Hence, some costs may be awarded to the opposite party.

7. I have considered the submissions made by learned counsel for both sides and have gone through the material available on record.

8. Since the prime reasons for belated filing of the connected interlocutory application is pursuing of the CRP No. 22/2018 by the present

appellant and since the Coordinate Bench of this court has observed that said period may be excluded while computing the period of limitation, hence, after considering the said aspect and after considering the reason for belated filing of the connected appeal shown by the appellant in the instant interlocutory application, this Court is of the considered opinion that the appellant has been able to show that he was prevented by sufficient cause to approach this court within the prescribed period of limitation for filing the connected appeal. However, considering the entire aspects of this case a cost of Rs. 2000/- is imposed on the applicant.

9. The period of the delay of 1713 days in preferring the connected appeal is accordingly condoned subject to depositing of an amount of Rs. 2000/- by the applicant before the Registry of the court as costs, within 15 days of this order.

10. In the event of deposit of such amount, the connected RSA may be registered and listed for admission.

11. The amount so deposited by the appellant may be disbursed to the opposite party/ respondent by the Registry after proper verification.

12. This interlocutory application is accordingly disposed of.

JUDGE

Comparing Assistant