

IN THE COURT OF ADDITIONAL DISTRICT JUDGE
BIRBHUM AT RAMPURHAT
Present : Sudipta Bhattacharjee, Additional District judge, Rampurhat
T.A. No.35/2018
CIS No.35/2018 (CNR No.WBBB05-000433-2018)

14

16.11.2021 Both parties are present with their Ld.lawyers.

Today is fixed for hearing of the application u/s 5 of Limitation Act.

The case record is taken up for hearing of the application u/s 5 of Limitation Act. A medical report is filed by the appellant. Let it be kept with the record.

Ld.lawyer for the appellants stated that the order of trial court passed on 08.05.2018 but due to illness the tadbirkarak/appellant no.1 did not file appeal before this court from 09.05.2018 to 07.06.2018. After getting the certified copy of the judgment, he contacted with the lawyer and memorandum of appeal was prepared and filed this appeal. He in support of his contention produced medical certificate, which speaks itself that the appellant no.1 was under the treatment of Dr. Mohanlal Mukherjee from 09.05.2018 to 07.06.2018 as he had been suffering from viral fever. Ld.lawyer for the appellant submitted that the delay is bona fide and there is no mal-intention on behalf of the appellant to delay the proceeding. Thus Ld.lawyer prayed for condonation of the delay.

The respondents appeared before the appeal and raised objection, but did file any W/O. He submitted that the delay has not been explained properly by the appellant. Thus he prayed for dismissal of the limitation application.

Heard both sides. Perused the application u/s 5 of Limitation Act. Considered.

It appears from the case record that the judgement passed on 08.05.2018 by Ld.Civil Judge (Jr.Divn), 1st Court, Rampurhat. From the submission of Ld.lawyer it appears that the tadbirkarak/appellant no.1 after the judgement became ill and suffered from viral fever as it revealed from the certificate issued by Dr. Mohanlal Mukherjee. After recovery he contacted with the lawyer and filed an application for getting certified copy of the judgment of the trial court and certified copy was ready on 27.06.2018 and it was handed over to the appellant no.1 on 28.06.2018. This case has been filed before this court on 30.06.2018. From the submission of both parties, it transpires that the appellant intends to contest

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order no.14(contd.....)

the appeal. There was delay of 62 days in presenting the appeal before this appellate court. The reason of delay was purely on medical ground and tadbirkarak/appellant no.1 of this appeal became ill which prevented from filing this appeal within the statutory period. The reason of delay has been satisfactory explained.

Having heard both sides and considering the document filed by the appellants, I am considered view that the appellants were prevented from filing the appeal due to illness of the tadbirkarak/appellant no.1 and the caused as assigned by the appellant is sufficient for condonation of delay.

Hence, it is ordered, the application u/s 5 of the Limitation Act is allowed on contest with a cost of Rs.1500/-.

Hence, the delay is condoned on payment of cost.

Accordingly the appeal is admitted subject to payment of cost of Rs.1500/-.

Fix 24.11.2021 for payment of cost.

Dictated and corrected
Sd/-S.Bhattacharjee
A.D.J. Rampurhat

Sd/-S.Bhattacharjee
Additional District Judge,
Birbhum at Rampurhat
JO Code-WB00794