

TA 69 OF 2013

Present: Sri Sanjoy Ranjan Paul
Additional District Judge, Tehatta, Nadia

Order No. 33 dt. 09/02/2023 :

Today is fixed for passing order of application under Order 41 Rule 3A CPC read with section 5 of the limitation Act, 1963.

Both the parties file their respective hajiras through Ld. Advocates.

Perused the application Order 41 Rule 3A CPC read with section 5 of the limitation Act, 1963 filed by the appellants/ defendants dated 3.10.13 and dated 30.6.18. Also perused the written objection filed by the plaintiff/ respondent against thereto.

By the application dated 3.10.13 & 30.6.18, the appellants/defendants has prayed for condonation of delay in filing the appeal. By filing the written objection, the respondent/plaintiff has prayed for rejection of the condonation of delay application on the ground as stated in the written objection. Also go through the evidence on record adduced by the parties and the argument advanced on the part of the respective ld. Advocates.

It appears from the evidence of the appellants/ defendants that appellant No.1 was seek and was under treatment from 20.12.2011 to 30.09.2013 under doctor Debabrata Joarder. Dr. Joarder has been examined and he deposed that he treated the appellant No.1 for hepatitis and chronic lumbago. He also issue a certificate for the dame. He proved the same and the same has been marked as exhibit. The substituted plaintiff/ respondent has also been examined as OPW1 and she deposed that plaintiff was her mother and she died, while the defendants are her daughter and son-in-law. She only denied the content of deposition of the defendants/appellants.

Considering all aspects and the evidence on records, I am of opinion that there was delay in filing the appeal for 1 year and 9 months. I find that the appellant No.1 was seek and was unable to move in the court to file the appeal in time. The prayer of the appellants is thus required to be allowed for ends of justice and to give them an opportunity to contest the appeal.

Accordingly, the application Order 41 Rule 3A CPC read with section 5 of the limitation Act, 1963 filed by the appellants/ defendants is thus allowed on contest but with cost.

The delay so caused to file the appeal is thus **condoned**.

It appears that appeal has already been admitted by order of this court dated 3.10.13 and registered as TA 69 of 2013. The respondent/ plaintiff also appeared in this appeal. The appeal is ready for hearing.

Fix 06.04.23 for hearing of the appeal in presence of both parties.

Dictated & corrected by me.

Addl. Dist. Judge
Tehatta, Nadia

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