

Misc Appeal No.14 of 18 (10 of 18)

31.1.19

Today is fixed for hearing of the application dated 4.7.18 filed by the applicants under Order 41 Rule 3 (a) of CPC read with Section 5 of the Limitation Act praying for condonation of delay in preferring the appeal.

Applicants and the respondents file their respective haziras.

The Id. Advocate for the applicants submits that the present appeal has been preferred against the order dated 28.2.18 and present appeal has preferred on 7.4.18. He further submits that applicants file an application for obtaining certified copy of order on 15.3.18 and copy was read on 19.3.18. He further submits that applicants received the copy on 3.4.18. According to him the Tadbirkar of this case, Chinmoy Singh, due to his illness and paucity of funds could not make contact with his Ld. Lawyer and as such copy was not obtained within time and appeal was not preferred within stipulated time. He also submits that there was no deliberate latches or negligence on the part of the applicants for such delay in preferring the appeal. Accordingly he prays for condonation of delay in preferring the appeal.

The Ld. Advocate for the respondents raised no objection regarding the prayer of the applicants but he only prays for imposition of cost.

The fact remains that there is a delay of 5 / 6 days in preferring the present appeal. Though, it is the case of the applicants that delay was caused as Tadbirkar of the case was ill and due to paucity of funds he could not be able to contact with his lawyer for obtaining certified copy and in preferring the appeal. Though, no documentary evidence has been produced by the applicants to that effect. This fact only should not be a ground from debarring a person from exercising his statutory right, where there is a mere delay of 5/6 days.

The facts and circumstances as stated above, leads me to hold that the applicants has able to show sufficient cause for not preferring the appeal within time and in consequence the application filed by the applicants should deserves to be allowed, subject to payment of cost.

Hence, it is

ORDERED

that delay in preferring the appeal is hereby condoned and the application under Order 41 Rule 3 (A) of the CPC is hereby allowed on contest, subject to payment of cost of Rs.300/-. The present appeal is hereby admitted.

Dealing Assistant to make note accordingly.

Fix 19.3.19 for hearing of the Misc appeal on payment of cost.

Dictated and Corrected by me

Addl. District Judge
1st Court, Purulia.

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