

**Misc. Case No. 18 of 2014.**

Present : Sri Subal Khamari  
District Judge, Purulia

**Order No. 34**  
**30-04-2018**

This day is fixed for passing order. The hearing arose out of an application filed under Order 41 Rule 3 A C.P.C read with Section 5 of the Indian Limitation Act filed by the Appellant praying for passing an order of condonation of delay in filing this case on the ground that the Appellant being the aged woman fell ill and she was busy for her treatment from 26-02-2014 to 11-04-2014 and Doctor advised her to take rest and such illness was beyond her control for which the delay in filing this Appeal took place.

Written objection was filed against this petition claiming mainly that the claim of the Appellant is baseless and false and the delay is intentional one for the purpose to keep the dispute pending and also for the purpose of harassing the Respondents.

Learned Advocate for the Appellant mainly argued that 27 days delay took place in filing this Appeal on the ground that the sole lady appellant Debibala Dutta was suffering from illness and that for the purpose of establishing her claim, Doctor of the hospital who treated her has deposed here and under such circumstances the matter of condonation of delay should be looked into with liberal approach. It is also added that written objection was filed against it and at the instance of Respondent the Doctor came again to depose in this case but without any treatment register as per his own claim to produce it which was called for in this case. In such a position the Appellant shall not suffer and hence her petition is liable to be allowed.

Learned Advocate for the Respondents mainly submitted that in this case judgment was passed on 21-01-2014 and the copy was ready on 28-02-2014 but the illness of the petitioner as it is shown is from 26-02-2014 to 11-04-2014 and the appeal was filed on 21-04-2014 and in the meantime from 28-02-2014 to 11-04-2014 there is no steps for the Appellant and that Doctor could not give satisfactory answer and that

**Misc. Case No. 18 of 2014.**

**Contd....Order No. 34**  
**30-04-2018**

Appellant did not come here with clean hands but she here with mala-fide intention and hence the petition shall not be allowed.

Having heard both sides, I perused the petition, its objection, the evidence of P.W-1 (husband of Appellant), O.P.W-1, O.P.W-2 and the medical certificate/Exhibit-1.

Thereafter, I am finding that P.W-1 simply said that his wife fell ill from 26-02-2014 to 11-04-2014 for which this Appeal could not have been filed within time and in his cross- examination, he failed to say the date when his wife fell ill. He also could not say the name of the Doctor and regarding the subject matter, he could not say in which year they purchased the suit plot and he admitted that during the Trial of this case in trial Court he himself used to look after this case and he also deposed in that case as witness.

O.P.W-2 is the son of the Respondent and he denied everything in his examination-in-chief. In his cross- examination he said that he does not know under which Doctor the Appellant was under treatment but appeal has been filed only to harass his father.

In this case Doctor has been examined as O.P.W-2 and his evidence has got vital role to play. He clearly said that he is unable to submit hospital record to show that the patient Debibala Dutta was examined by him from 26-02-2014 to 11-04-2014. Certificate issued by him ( Exhibit-1) does not show as to how much fever the patient was suffering continuously and that he could not diagnose the disease of the patient practically and he did not forward the patient to another hospital for further treatment and he did not obtain her signature on the certificate issued by him and that he shall try to produce all the documents relating to this patient lying in his hospital and in his cross- examination, he disclosed that in the certificate/ Exhibit-1 no details is mentioned in general but everything is mentioned in the prescription issued to the patient and that hospital supplied him this format (Exhibit-1) for issuing certificate to the patient. He was examined on 11-07-2017 and he was further examined on 19-01-2018 and on this date he clearly stated that the treatment register of their hospital is out of trace and hence he could not bring the same.

It is needless to mention that the Appellant requires to prove her own case and it is also the accepted principle of law that one must come to Court with clean hand. Here I find from the evidence of P.W-1 that he used to look after the case in the Court below all along and he also deposed in the lower Court. It is an admitted fact that Appellant is a lady but her age is not mentioned in the cause title of the Appeal nor I found it from the certificate issued by the Doctor (Exhibit-1). The fact reveals that P.W-1 being the husband of the lady Appellant is supposed to look after this matter of Appeal as earlier but in the question of filing this Appeal, he went off from the picture though he came to depose at this point of time also on behalf of his wife but it is a fact that he took the plea of the illness of his wife/Appellant while filing this Appeal and while dealing with the matter of this Appeal.

**Misc. Case No. 18 of 2014.**

**Contd....Order No. 34**

**30-04-2018**

In such a position the illness of the Appellant also to be proved properly and it shall be up to the satisfaction of the Court. To this extent neither the evidence of P.W-1 nor the evidence of O.P.W-2/Doctor is found satisfactory. The medical certificate/Exhibit-1 is found doubtful one. From the evidence of Doctor it is found that he issued prescription wherein everything is mentioned relating to the particular patient (here Appellant) but not a single cheat of prescription has been filed on behalf of the Appellant before this Court though admittedly the Appellant was under the Doctor's treatment for a prolonged period from 26-02-2014 to 11-04-2014. Petition reflects that Doctor advised her to take rest but Exhibit-1 does not contain anything to that extent. She was found fit on 12-04-2014 but no explanation of delay is there in the petition for the time from 12-04-2014 to 21-04-2014. In such a position the contents of Exhibit-1 has also become doubtful and hence under the mentioned circumstances, no reliance can be placed upon it. It is important to mention that in the said circumstances the evidence/claim of O.P.W-1 cannot be neglected.

It is a fact that the subject matter of delay in filing such case or Appeal with prayer for condonation of delay shall be dealt with liberal view but at the same time it is also to be considered as to whether such applicant placed himself or herself before the Court of law with his or her heirs clean coupled with cogent and believable evidences.

Regard being had to the entire facts and circumstances of this situation at hand before me, I am compelled to conclude that the Appellant/Petitioner failed to establish her claim by adducing cogent and believable evidence on record to favour her such application praying for condonation of delay. This petition is thus disposed of with decision against the Appellant/petitioner.

C.F paid is found correct.

Hence, it is,

**Ordered**

That the petition under Order 41 Rule 3 A C.P.C read with Section 5 of the Indian Limitation Act is hereby dismissed on contest but considering the circumstances the same is without any costs.

The net result is that the Appeal stands not allowed.

This Misc. Appeal is thus disposed of.

(Dictated & Corrected)

District Judge, Purulia

District Judge, Purulia