

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).23921/2012

(From the judgement and order dated 15/06/2012 in RVW No.248/2011 of The HIGH COURT OF CALCUTTA)

BAIDYA NATH ROY

Petitioner(s)

VERSUS

CHANCHAL KUMAR ROY & ORS.

Respondent(s)

(With prayer for interim relief)

Date: 21/08/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) Mr. Santi Ranjan Das, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

The petitioner has challenged order dated 15.6.2012 passed by the Calcutta High Court dismissing the review application filed by him as barred by time.

In the suit for eviction filed by the petitioner, the trial Court accepted the application filed by him for recording his evidence on commission. The defendants could not cross-examine the witnesses of the petitioner because the wife of respondent No.1 was suffering from cancer and on the date of pre-emptory hearing she died. The trial Court did give one more opportunity to defendants to cross-examine the petitioner's witnesses but they could not avail that opportunity. Therefore, the trial Court recalled the earlier order.

The revision filed by the respondents was allowed by the High Court vide order dated 4.7.2011 and 30 days time was allowed to them to cross-examine the petitioner's witnesses. The petitioner did not challenge that order. Instead, he filed an application for review of order dated 4.7.2011. He also applied for condonation of 125 days delay.

The learned Single Judge of the High Court did not feel satisfied with the cause shown by the petitioner and refused to condone the delay. Consequently, the review application was dismissed as barred by limitation.

We have heard learned counsel for the petitioner. In our view, the petitioner's assertion that he could not file the review petition within time on account of the alleged wrong advice of the advocate did not furnish sufficient cause for condonation of more than 4 months delay and the learned Single Judge rightly declined to exercise the power vested in the High Court under Section 5 of the Limitation Act because the petitioner did not disclose as to when did he contact the advocate for the purpose of filing the review petition and when the advocate advised him to do so.

With the above observation, the special leave petition is dismissed.

| (Parveen Kr.Chawla)
| Court Master
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| | (Phoolan Wati Arora)
| | Court Master
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