

Form No. J. (2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

Present:

The Hon'ble Justice Subhro Kamal Mukherjee
and
The Hon'ble Justice Subrata Talukdar

W.P.L.R.T. 359 of 2014

Samir Kumar Sarkar

...Petitioner

-Versus-

The State of West Bengal and others

... Respondents

For the petitioner: Mr. Debjit Mukherjee,
Ms. Dipanwita Ganguly.

For the State: Mr. Sadananda Ganguly,
Mr. D. Banerjee.

For the respondent no. 4: Mr. Subrata Roy Karmakar,
Mr. Subhajit Mitra.

For the respondent nos. 5 to 9: Mr. Santanu Chatterjee.

For the respondent no. 10: Mr. Prithwish Kumar Basu.

Judgment on: November 19, 2014.

Subhro Kamal Mukherjee, J.

This is an application under Article 226 of the Constitution of India challenging inaction on the part of the West Bengal Land Reforms and Tenancy Tribunal in not extending some interim protection during pendency of the original application, which was registered as O.A. No. 3213 of 2014.

The name of the private respondent no. 4 was recorded in the settlement khatian. The petitioner was aggrieved and, therefore, applied for correction of record of rights. The Block Land and Land Reforms Officer, Uluberia-I, District: Howrah, granted the prayer of the petitioner and corrected the settlement record of rights by deleting the name of the private respondent no. 4 on September 14, 2011 and inserted the name of the petitioner.

The private respondent no. 4 is aggrieved and preferred L.R. Appeal No. 76 of the 2012 before the District Land and Land Reforms Officer, Howrah. The appeal was presented on March 6, 2013. There was considerable delay in filing the appeal. An application for condonation of delay in filing the appeal was, also, filed.

By order dated March 15, 2013, the appellate authority condoned the delay in filing the appeal *ex parte* for the sake of natural justice.

The appeal was, thereafter, transferred to the file of Sub-divisional Land and Land Reforms Officer, Uluberia and is pending before him.

The petitioner raised objection as to the maintainability of the appeal inasmuch as the delay was condoned *ex parte*. Since the Sub-divisional Land and Land Reforms Officer was not entertaining the prayer of the petitioner and was

hurriedly proceeding with the appeal, the petitioner approached the West Bengal Land Reforms and Tenancy Tribunal to ventilate his grievance.

Unfortunately, the tribunal fixed the original application on June 10, 2015 for admission hearing. Hence the petitioner has come up with this writ application before this Court.

Mr. Mukherjee submits that unless interim protection is extended the original application will become infructuous, as the Sub-divisional Land and Land Reforms Officer, Uluberia, is not granting adjournments of the hearing of the said appeal.

Mr. Subrata Roy Karmakar, learned advocate for the respondent no. 4, in his usual fairness, submits that, from perusal of the records, it appears delay was condoned *ex parte*.

We are of the considered opinion that the appellate authority ought not to have condoned the delay without giving any opportunity of hearing to the respondents in the appeal.

The judicial committee of the Privy Council in **Krishnasami Pandikondar versus Ramasami chettiar and others** reported in **45 Indian Appeals 25** held that the procedure for admitting an application under Section 5 of the Limitation Act by an order made *ex parte* by the Court has been manifestly open to grave objection. The Privy Council observed that in place of such practice, the Court should adopt a procedure, which would secure, at the stage of admission, the final determination (after due notice to all parties) of any question of limitation affecting the competence of the appeal.

This Court in **Jnanadasundari Shaha versus Madhabchandra Mala** reported in **AIR 1932 Calcutta 482** held that where an appeal has been presented beyond the period of limitation, notices ought to be issued, before registering it, upon the respondents and the question of extension of time should be determined before such registration.

The Madras High Court **In Re, Raman** reported in **AIR 1958 Madras 312** held that delay should not be excused without notice to the respondent because after the period of limitation the respondent acquired valuable right and he could not be deprived of that right without notice.

In Krishnasami Pandikondar (supra) and In Re, Raman (supra) it was made clear that it was always open to the respondent to raise an objection to excuse of the delay on the ground of absence of notice even at the time of final hearing of the appeal. When he did object, the Court was bound to consider the ground urged.

The appellate authority exceeded his jurisdiction in condoning the delay *ex parte* inasmuch as the valuable right of the petitioner has been taken away without giving him any opportunity of contesting the application for condonation of delay.

We, therefore, set aside the order condoning the delay dated March 15, 2013. The appellate authority being the Additional District Magistrate and District Land and Land Reforms Officer, Howrah, is directed to consider the application for condonation of delay after giving opportunities of hearing to all concerned in the matter.

With the aforesaid directions, the writ application stands allowed.

Mr. Debjit Mukherjee, learned advocate and Mr. Subrata Roy Karmakar, learned advocate jointly submit that in view of the order passed today, original application becomes infructuous. Mr. Mukherjee, further, submits that the petitioner shall take steps for withdrawal of the same from the said Tribunal.

We make no order as to costs.

Let Photostat certified copy of this order be given to the parties, if applied for, on urgent basis.

(Subhro Kamal Mukherjee, J.)

Subrata Talukdar, J.

I agree.

(Subrata Talukdar, J.)