

MC(N) 3663/2006

BEFORE

THE HON'BLE MR JUSTICE AMITAVA ROY

Heard Mr. BD Goswami, learned counsel for the applicant and Mr. GN Sahewalla, Senior Advocate assisted by Ms. Jain, Advocate for the opposite party.

By this application, a prayer has been made for condonation of delay of 76 days in preferring the accompanying application (Review Petition No. 108 of 2006), seeking review of the judgment and order dated 17.03.2006, passed by this Court in C.R.P. No. 228 of 2002. By the said verdict, this Court interfered with the judgment and order dated 08.05.2002, passed by the learned Civil Judge (Sr. Division), Bongaigaon, in T.A. No. 09 of 1999, restoring the decree passed by the learned Trial Court in Title Suit No. 09 of 1999, ordering eviction of the applicant-review petitioner from the suit premises under the Urban Areas Rent Control Act, 1972 (hereafter also referred to as the 'Act'), on the ground of default in payment of rent.

The cause assigned in support of the prayer for condonation of delay, is that the factum of the disposal of the civil revision petition by this Court, was not communicated to the applicant-writ petitioner and it was only on 12.04.2006 on his visit to Guwahati and his interaction with his learned counsel, he came to learn about the same. Thereafter, he fell to viral jaundice and remained under medical treatment from 15.04.2006 to 25.06.2006. The review application was filed thereafter, on being advised. In the process, the above delay had occurred.

In his counter, the opposite party, while questioning the correctness of the grounds offered, has asserted that the decision of this Court was pronounced in presence of the counsel of both sides and that the plea that the petitioner was unaware thereof, is untenable. The opposite party also denied that the petitioner was suffering from jaundice and has contended that during the relevant time, he was seen attending his business in the suit premises.

After hearing the learned counsel for the parties and on a consideration of the pleaded facts, I do not feel persuaded to hold that delay has been satisfactorily explained. Noticeably, though the applicant has asserted illness to be one of the grounds contributing to the delay and mentioned about a medical certificate in support thereof, as a matter of fact, the same has not been annexed to this application. The statement that he was unaware of the decision of this Court in C.R.P No. 228 of 2002, till 12.04.2006, not being intimated about the same by his learned counsel also does not inspire the confidence, the same not being corroborated by essential facts.

Further, on a consideration of the grounds drawn up for the review of the judgment and order of this Court, the same appear to bearing wholly on the merit of the findings, which if entertained, would necessitate a fresh consideration of the pleadings and the evidence on record, which indubitably is beyond the scope of review in law.

In the above view of the matter, the application stands rejected.