

CRP 71/2008

BEFORE

HON'BLE MR JUSTICE HN SARMA

This revision petition under Article 227 of the Constitution of India has been filed praying for exercising supervisory jurisdiction of the court to scrutinize the legality and validity of the impugned judgment and order dated 12.3.08 passed by the learned Civil Judge, North Lakhimpur in Misc.(J) Case No. 1/08.

By the impugned order, the learned Judge rejected the prayer of the petitioner to condone the delay in filing the connected appeal preferred against the judgment and decree dated 15.9.05 in Title Suit No. 30/90 by the learned Munsiff No.1, North Lakhimpur.

I have heard Mr. N. Dhar, learned counsel for the petitioner and Mr. A. Barman, learned counsel appearing for the respondent.

The briefly stated facts necessary for the purpose of disposal of the revision petition are that the plaintiff instituted the Title Suit No. 30/90 in the court of learned Munsiff No.1, North Lakhimpur against the petitioner praying for decree and declaration of right title and interest and for recovery of khas possession of the suit land which is the suit path as described in the schedule of the plaint.

The petitioner contested the suit by filing written statement and during the course of the proceeding of the suit the learned trial court having rejected the prayer of the petitioner to examine certain documents by hand writing experts, the petitioner filed Civil Revision No. 185/02 wherein the further proceeding in the suit was stayed. After amendment of the CPC in the year 2002 on the prayer of the petitioner the aforesaid revision was allowed to be withdrawn with liberty to file an appropriate application. Thereafter, on 28.9.07 WP (C) No. 5523/05 was filed by the petitioner which was subsequently re-numbered as CRP No. 13/07. However, having been found in the meantime the suit was decreed by the learned Munsiff on 15.9.05, the Revision Petition was closed allowing the petitioner with liberty to challenge the final judgment and decree dated 15.9.05. Thereafter, the petitioner filed the connected appeal before the learned Civil Judge, North Lakhimpur with an application for condonation of delay which was rejected by the learned appellate court vide impugned judgment and order dated 12.3.08 passed in Misc. Case No.1/08. Hence, this revision petition.

The learned appellate court rejected the prayer of the petitioner holding inter alia that the impugned order having been passed in the year 2005, the petitioner should have preferred appeal within the period of limitation prescribed by law. That apart, it is also observed by the learned appellate court that the petitioner after dismissing the WP (C) No. 5523/05 in spite of filing the CRP No. 13/07 should have filed the appeal but in fact it appears that the WP (C) No. 5523/05 itself was converted into CRP No. 13/07.

From the record available before me discloses that the petitioner is genuinely pursuing the matter before the higher court and the facts of the case do not disclose that the petitioner can be held responsible for not pursuing the remedy available under the law. In fact, the petitioner is pursuing the matter before this court. However, because of change of the provision of law and procedure, the petitioner did not get any relief and ultimately in view of the final judgment passed in the suit, the revision petitioner was filed against the interlocutory order which lost its stand. The aforesaid facts disclose that the petitioner has not willfully and negligently acted in pursuing the remedy before the court. In that view of the matter, the learned appellate court did not apply the correct principle of law in condoning the delay in filing the appeal.

Accordingly, this revision petition stands allowed and the delay in filing the connected appeal before the learned trial court stands condoned. The petitioner be allowed to file the appeal which is stated to have been returned back and upon such filing the learned trial court shall dispose of the same in accordance with law as expeditiously as possible.

Both the parties are directed to appear before the appellate court on 18.7.08 on which date the learned trial court shall pass appropriate order on the appeal. However, the petitioner shall file the connected appeal within the period of sev

en days from to-day before the learned trial court. For a period of two weeks from to-day the interim order dated 26.3.08 shall continue. Thereafter the petitioner shall file appropriate application before the learned appellate court for stay of the execution.