
(2018) 05 CAL CK 0157
In the Calcutta High Court
Case No : C.O. No.927 of 2018

Dhananjay Manna And Others

APPELLANT

Vs

Arup Kumar Manna

RESPONDENT

Date of Decision : 08-05-2018

Acts Referred:

Limitation Act, 1963 — Section 5

Code of Civil Procedure, 1908 — Section 2, Order 20 Rule 6A, Order 41 Rule 1

Citation : (2018) 05 CAL CK 0157

Hon'ble Judges : SABYASACHI BHATTACHARYYA, J

Bench : Single Bench

Advocate : Soumyen Datta, Tapas Singha Roy

Final Decision : Disposed Of

Judgement

Mr. Ayan Mitra, learned advocate, appears and submits that although he had lodged a caveat in respect of a different order than the order impugned

herein, his client has instructed him not to appear in the present matter. Mr. Mitra also files a written instruction to that effect, which is kept on record.

The learned advocate for the petitioners is thereafter permitted to move the revisional application, since there is no caveat lodged in respect of the

particular order which has been impugned herein. The petitioners preferred Title Appeal no.115 of 2004 against a final decree passed in a partition suit.

The memorandum of such appeal was accompanied by an application under Section 5 of the Limitation Act for condonation of delay in presentation of

the said appeal. The appellate court rejected such application for condonation of delay and consequently dismissed the appeal, holding the same to be

not admitted.

For the purpose of preferring a second appeal against such deemed decree, the

petitioners applied for drawing up a decree before the appellate court.

By virtue of the impugned order dated January 25, 2018, the appellate court refused such prayer for drawing up a decree on the ground that no effective decree was passed.

Such view of the appellate court was on the face of it erroneous, since the law is now settled that such an order, whereby the condonation application, consequently the main appeal, is dismissed, is deemed to be a decree and an appeal has to be preferred against the same. However, there is another technical difficulty in the matter, inasmuch as such an order does not strictly speaking come within the four corners of the definition of a decree as contemplated in Section 2 of the Code of Civil Procedure.

As such, the appellate court was probably not entirely unjustified in refusing to draw up the decree. To obviate such hurdle, the only option is probably

to take recourse to Order XX Rule 6A of the Code of Civil Procedure. Sub-Rule (2) of the said Rule provides that an appeal may be preferred against

the decree without filing a copy of the decree and in such a case the copy made available to the party by the Court shall for the purpose of rule 1 of

Order XLI be treated as the decree. It is further provided in the said sub-rule that as soon as the decree is drawn, the judgment shall cease to have

the effect of a decree for the purposes of execution or for any other purpose.

Accordingly, C.O. 927 of 2018 is disposed of by permitting the petitioners to prefer a second appeal against the judgment and deemed decree dated

November 29, 2017, whereby the application for condonation of delay, and consequently the Title Appeal of the petitioners, was dismissed. Such

second appeal would be deemed to be properly presented pursuant to the provisions of Order XX Rule 6A of the Code of Civil Procedure, till a decree

is drawn up by the appellate court.

While the petitioners are free to pursue such remedy, it will also be incumbent upon the appellate court below, that is, the court of the District Judge at

Howrah, to take all possible steps for drawing up a decree in respect of the judgment and deemed decree in question. As soon as such decree is made

available to the petitioners, the petitioners will file the same and get the proposed second appeal regularised. In view of no adverse order being passed

against the opposite parties, no prior service of notice was deemed necessary on the opposite parties. There will be no order as to costs.