

(2019) 08 CAL CK 0305

In the Calcutta High Court

Case No : Civil Application (CAN) No. 8549, 8550 Of 2019, Tender Of Mand Appl
(MAT) No. 1232 Of 2019

Kamal Narayan Tewari @ Tripathi & Anr

APPELLANT

Vs

Civil Judge (Junior Division), 2nd Court, District – Paschim
Medinipur, West Bengal & Ors

RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2019) 08 CAL CK 0305

Hon'ble Judges : Biswanath Somadder, J; Arindam Mukherjee, J

Bench : Division Bench

Advocate : Ram Pratap Tripathi

Final Decision : Dismissed

Judgement

Biswanath Somadder, J

Affidavit of service filed in Court today be taken on record. In spite of service of notice, none appears on behalf of the respondents.

In the instant appeal, there are two appellants, namely, Kamal Narayan Tewari @ Tripathi, being appellant no.1 and Ram Pratap Tripathi, being appellant no.2. The appellant no.2 appears in-person and submits that he will argue his own case and shall also represent the appellant no.1, who is his father. According to the appellant no.2, his father has given power in his favour as the Constituted Attorney to represent his father's interest before us.

Although, we are inclined to allow the appellant no.2 to plead his own case before us, we are not inclined to allow him to plead on behalf of his father even as his recognised agent holding a power of attorney in the absence of his competence to do so, not being enrolled as an Advocate under the provisions of the Advocates Act.

Re: CAN 8549 of 2019

This is an application under section 5 of the Limitation Act.

Having heard the appellant/applicant no.2-in-person and upon perusing the instant application for condonation of delay, it appears that sufficient cause has been shown by the applicants to explain the delay in filing of the appeal. As such, the delay is condoned. The application for condonation of delay, being CAN 8549 of 2019, is accordingly allowed.

Re: MAT 1232 of 2019 with CAN 8550 of 2019

The instant appeal arises out of a judgment and order dated 15th May, 2019, passed by a learned Single Judge in WP 4649 (W) of 2019 (Sri Kamal Narayan Tewari @ Tripathi & Anr. vs. The Civil Judge (Junior Division), 2nd Court, District - Paschim Medinipur, West Bengal & Ors.).

The writ petition was filed and moved by the writ petitioner no.2, (being the appellant no.2), in-person.

By the impugned judgment and order, the learned Single Judge has been pleased to observe, inter alia, to the effect that the writ petition was not maintainable since the challenge was in respect of orders of the learned Civil Judge (Junior Division), 2nd Court at Paschim Medinipur. The learned Single Judge has considered all relevant facts of the instant case including the judgment referred to by the writ petitioner no.2. The learned Single Judge has also been pleased to observe to the effect that dismissal of the writ petition shall not prevent the writ petitioners from raising their grievances before the appropriate forum/Court in accordance with law. Before parting with the case, the learned Single Judge has made certain observations with regard to the impropriety of impleading the learned Second Civil Court (Junior Division), Paschim Medinipur, both by designation and by name as party respondent no.1 in the writ petition. In this context, the learned Single Judge has referred to paragraph 43 of the judgment rendered by the Hon'ble Supreme Court in the case of Jogendrasinghji Vijaysinghji vs. State of Gujarat & Ors. reported in (2015) 9 SCC 1. In fact, paragraph 43 of the said judgment was reproduced by the learned Single Judge in the impugned judgment and order. However, since the writ petitioner no.2 had appeared in-person, the learned Single Judge restrained himself from taking a strict view on the issue. The Court directed that a copy of the impugned judgment and order was to be communicated by the Registry to the learned Second Civil Court (Junior Division), Paschim Medinipur, for the sake of record. The learned Single Judge was further pleased to direct the writ petitioners to also communicate the impugned judgment and order to the other non-appearing respondents and produce proof of such communication before the next Court/forum, if advised, to prefer proceedings subsequently.

The impugned judgment and order is supported with cogent and justifiable reasons. In an Intra-Court Mandamus Appeal, no interference is usually

warranted unless palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order. In the facts of the instant case, we do not notice any such palpable infirmity or perversity on a plain reading of the impugned judgment and order.

As such, we do not find any merit in the instant appeal which is liable to be dismissed and stands accordingly dismissed along with the connected application.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties.