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**(2019) 06 CAL CK 0033**

**In the Calcutta High Court**

**Case No : Civil Order/Misc.Cas (CO) No. 400 Of 2019**

Kapur Chandra Garg And Anr

APPELLANT

Vs

Vivek Kumar Sukla

RESPONDENT

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**Date of Decision : 21-06-2019**

**Acts Referred:**

Limitation Act, 1963 — Section 5, 12(2)  
Constitution Of India, 1950 — Article 227

**Citation : (2019) 06 CAL CK 0033**

**Hon'ble Judges : Madhumati Mitra, J**

**Bench : Single Bench**

**Advocate : K.C. Garg, Sunita Agarwal, Rabiya Khan, Krishna Das Poddar**

**Final Decision : Dismissed**

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## **Judgement**

Madhumati Mitra, J

This is an application under Article 227 of the Constitution of India filed by the petitioners challenging the impugned order no. 8 dated 12.12.2018, passed by Learned Chief Judge, City Civil Court, Calcutta in Title Appeal No.117 of 2017.

The present petitioners filed ejectment suit being no.13 of 2012 against the present respondent. The said suit was decreed on contest on 29th March, 2017 by Learned Judge, 4th Bench, Small Causes Court, Calcutta. It has been stated by the petitioners that they obtained the possession of decretal property through execution on 20.11.2017. Thereafter, on 1st December, 2017 respondent preferred an appeal along with an application under Section 5 of the Limitation Act praying for condonation of delay in preferring the appeal.

The application under Section 5 of the Limitation was allowed by the Learned Chief Judge, City Civil Court, Calcutta vide Order dated 12.12.18 and the appeal preferred by the respondent challenging the judgment and decree passed in Ejectment Suit no.13 of 2013 has been admitted.

During the course of hearing, the Learned Advocate appearing for the petitioners has assailed the impugned order regarding admission of appeal upon condonation of delay on the ground that the Learned Court below has failed to exercise jurisdiction vested in it and committed an error.

Learned Advocate appearing for the petitioners has contended that Learned Judge has erred in observing that there was delay only for 8 days in preferring the appeal. He has further contended that the Vakalatnama pertaining to the memorandum of appeal being executed by a stranger to the suit and same was accepted by an Advocate who was not properly authorized by the respondent/opposite party. He has further contended that at the time of allowing the prayer for condonation of delay, Learned Judge has overlooked that aspect.

In support of his contention, Learned Advocate appearing for the petitioners has placed his reliance on the decision of United Commercial Bank Vs. M.C. Shaw Bonded Warehouse and Others, reported in AIR 1985 Calcutta 445 and the decision of Krishna Kumar Khemka and Another Vs. Jagadish Narayana Bhan and Others reported in AIR 1971 Calcutta 322.

On the other hand Learned Advocate appearing for the Opposite party/respondent has submitted that the delay in preferring the appeal has been properly explained and the appeal has been preferred on the basis of power of Attorney. According to his contention Learned Judge allowed the application under Section 5 of the Limitation Act on being satisfied that the appellant was prevented from sufficient reason to prefer the appeal in time. He has further contended that Learned Judge passed the impugned order after giving opportunity of being heard to both the parties and there is no jurisdictional error or violation of law. In support of his contention he has referred the decision of Executive Officer, Antiyur Town Panchayat Versus G.Arumugam (D) BY.LRS. reported in (2015)4 WBLR (SC) 891.

LCR has been called for. I have gone through the impugned order and the L.C.R also. It reveals that the Judgment which has been challenged in Appeal was passed on 29.03.2017. The appellate/opposite party applied for certified copy on 04.05.2017 i.e after expiry of the period of limitation in preferring the appeal. In view of the decision referred by the Learned Advocate for the petitioners as reported in AIR 1985 Calcutta 445, the appellant is not entitled to the benefit of deducting time requisite for obtaining certified copy. In his application under Section 5 of Limitation Act the appellant/opposite party explained the delay of 275 days in preferring the appeal. The office of the Learned Chief Judge made mistake to calculate the delay. At the time of calculating the delay, the office of Learned Chief Judge, City Civil Court over looked that the appellant was not entitled to the benefit of Section 12(2) of the Limitation Act as he applied for certified copy of the judgment after expiry of the period of limitation in preferring the appeal. Factual situation of the decision as cited by the Learned Advocate for the petitioners is not similar to that of the factual situation of the case at hand. In the present case, the appellant/opposite party explained the delay for the

total period. Learned Judge acted on the basis of the report of his office which miscalculated the period of delay. In the instant case the appellant explained the delay of 275 days in his application under Section 5 of the Limitation Act.

From the impugned order it appears that Learned Chief Judge considered all relevant facts and circumstances and discussed the issues as raised by the present petitioners and thereafter admitted the appeal after condoning the delay in preferring the same.

Revisional power can be exercised and the order of trial Court can be set aside only where there has been an error of jurisdiction or violation of law.

Interference under Article 227 of the Constitution is permissible only if there exists an error apparent on the face of the record or the Judge concerned failed and neglected to take into consideration the relevant factors.

In the instant case I do not find any such error on the part of the Learned Trial Judge and as such the question of interference with the impugned order does not arise. The revisional application is devoid of merit and stands dismissed.

Let a copy of this order along with the LCR be sent down to the Learned Court below at once.

Certified copy of this order be immediately made available to the parties subject to compliance with all requisite formalities.