
(1996) 10 GAU CK 0012
In the Gauhati High Court
Case No : Civil Revision No. 391 of 1992

Ramesh Chandra Kalita

APPELLANT

Vs

Mira Patowari and Others

RESPONDENT

Date of Decision : 08-10-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, Order 41 Rule 3, Order 41 Rule 3A, Order 41 Rule 3A(1), Order 41 Rule 3A(3)
Limitation Act, 1963 — Section 5

Citation : (1997) 1 GLR 287

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : G.P. Bhowmik, for the Appellant; P.K. Kalita, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—An appeal was filed before the Lower Appellate Court against the judgment of the learned Munsiff. There was delay in filing the appeal and accordingly an application was filed for condonation of delay u/s 5 of the Limitation Act. On that application for condonation of delay, notice was issued. Another application was filed under Order 41 Rule 5 for stay of the execution of the decree, the Lower Appellate Court did not grant stay, only because he held that stay can not be granted in view of Order 41 Rule 3A(3). Rule 3A(3) reads as follows:

(3) Where an application has been made under Sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under Rule 11, decide to hear the appeal.

2. A fair interpretation of Order 41 Rule 3 of the CPC would be that it requires that the Appellant presents an appeal after expiry of the period of limitation, it shall be accompanied by an application supported by affidavit stating the reasons for delay in preferring the appeal along with the Memorandum of appeal, After-all

Order 41 Rule 3A is a procedural law and this procedural law test be interpreted in such a manner that to advance the cause of justice. If the power to grant the stay is not given in exceptional cases this will cause sheer Injustice to an Appellant who may be prevented from filing an appeal in time because of compelling circumstances. After-all law can not be allowed or utilised to cause injustice. In such a situation the Court can exercise the power u/s 151 of the CPC to grant relief in such a case if the justice demands it. That is the mandate of law and that is the requirement of law. Accordingly this "Revision Application is allowed and the stay application shall be considered by the lower appellate Court in accordance with law.

3. With this observation, this Civil Revision is allowed.

4. I have heard Shri G.P. Bhowmick, learned Advocate for the Petitioner and Shri Kalita, learned Advocate for the Respondents.