

(2002) 08 GAU CK 0036

In the Gauhati High Court

Case No : Regular Second Appeal No. 7 of 1996

State of Tripura

APPELLANT

Vs

Dilip Kumar Dey

RESPONDENT

Date of Decision : 02-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Section 5

Citation : (2003) 1 GLR 1 : (2002) 3 GLT 528

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : P. Dutta, for the Appellant; H.K. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

B.B. Deb, J.—Heard the learned counsel for the parties.

2. On a preliminary question of law, this appeal could be disposed of.

3. This second appeal u/s 100 of the CPC has been filed by the appellant against the judgment passed by the learned District Judge, West Tripura Agartala in T.A. 17 of 1995 rejecting the prayer for condonation of delay filed by the appellant u/s 5 of the Limitation Act resulting in dismissal of the appeal being time barred.

4. The present appellant preferred Title Appeal bearing No. 17 of 1995 on 7.6.1995 before the learned District Judge, West Tripura Agartala, being the First Appellate Court, against the judgment/ decree dated 15.12.1994 passed by the learned Munsiff, Agartala, Tripura in T.S. No. 15/90. Since there was delay of 4 months 10 days in preferring the First Appeal the appellant filed an application u/s 5 of the Limitation Act seeking condonation of delay. The learned District Judge, being the First appellate court took up the matter pertaining to condonation of delay and after hearing the parties, rejected the petition vide impugned judgment dated 23.11.1995. The operative portion of the judgment reproduced below :

"In view of the aforesaid circumstances, I do not find any ground to condone the delay in view of the settled decision referred to by the learned Advocate of the Respondent. Thereby, prayer of condonation of delay is rejected and accordingly appeal is also dismissed."

5. From the afore quoted order of the learned First Appellate Court it reveals that the learned First Appellate Court was declined to condone the delay in proffering the First Appeal and, as such, the Impugned order passed by the learned First Appellate court cannot be treated to be a "decree" within the meaning of Section 2(2) of the CPC for the purpose of preferring appeal u/s 100 of the Civil Procedure Code.

6. A second appeal would lie only against a "decree" passed by the First Appellate Court on substantial question of law. The rejection/dismissal of any petition filed u/s 5 of the Limitation Act seeking condonation of delay in proffering appeal is not a "decree" within the meaning of Section 2(2) of the CPC and, as such, it is not appealable u/s 100 of the Civil Procedure Code. The consequence of such rejection/dismissal of the condonation petition substantially tantamount the rejection of the Memo of Appeal.

7. This being the legal position, the present Second appeal is not maintainable and, as such, is dismissed with no order as to costs.