

(2018) 12 CAL CK 0117
In the Calcutta High Court

Case No : Tender First Appeal No. 75 Of 2018, Civil Application No. 2015, 3839 Of 2018

State Of West Bengal & Anr

APPELLANT

Vs

Free India Dry Accumulators Ltd

RESPONDENT

Date of Decision : 18-12-2018

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2018) 12 CAL CK 0117

Hon'ble Judges : Sambuddha Chakrabarti, J; Madhumati Mitra, J

Bench : Division Bench

Advocate : Chandi Charan De, Rabindra Narayan Dutta, Debayan Bera, Sakti Prasad Chakraborty

Judgement

This is an application under Section 5 of Limitation Act for condonation of delay in filing the present appeal.

There has been a delay of 220 days in presenting the appeal as notified by the Additional Stamp Reporter.

We have heard Mr. De, the learned advocate for the appellant and have perused the application.

We are of the view that the petitioner was prevented by sufficient cause from filing the appeal within the period of limitation, particularly when the deponent of the application, i.e. the Additional Land Acquisition Officer has affirmed the contents of paragraph 11 of the application as true to his knowledge.

The respondents do not oppose this application and have expressed that they do not wish to file affidavit in opposition to it.

The delay in filing the appeal is condoned. Let the appeal be registered, if it is otherwise in form.

The application being C. A. N. 2015 of 2018 is allowed.

Re: C. A. N. 3839 of 2018.

The applicant is directed to calculate the decretal dues by a competent person and to submit the same in Court on the next date.

There shall be an unconditional stay of the execution case being L. R. A. Case No. 2 of 2017 pending before the learned Additional District Judge, 3rd Court, Barasat, North 24 Parganas till January 31, 2019.

Let this matter appear as an Application in the Combined Monthly List of January 2019 within the first 50 matters under that heading.

Re: F. A. T. 75 of 2018.

This is a joint venture appeal at the instance of the State of West Bengal and the Managing Director of South Bengal State Transport Corporation. The two cannot simultaneously file an appeal against the impugned judgment and order, particularly when the appeal has been filed with the vakalatnama executed by and on behalf of the respondent no. 1, i. e. State of West Bengal.

Mr. De, the learned advocate for the appellants, submits that this has been a mistake on their part and he has the authority to appear only for the State of West Bengal.

On his prayer to which Mr. Bera, the learned advocate for the respondent, has no objection the appellant no. 2, i.e. the Managing Director, South Bengal State Transport Corporation is directed to be transposed to the category of the respondent no. 2.

Let such amendment be effected in the cause title here and now.

Mr. Ayan Banerjee, the learned advocate, submits that he has the instruction to appear for the transposed respondent no. 2.

Mr. Bera, the learned advocate for the respondent no. 1 wishes to prepare the paper books out of Court.

Call for the records. The respondent no. 1 is directed to put in the special messenger's cost in course of this week.

The office is directed to examine the lower Court's record and to serve notice upon the learned advocate for the respondent no. 1, if on examination the records are found and complete.

The respondent no. 1 is directed to prepare and file requisite number of paper books out of Court within eight weeks from the date of receipt of the notice of arrival of the lower Court's record. All formalities regarding preparation of paper books are dispensed with.

The respondent no. 1 as well as transposed respondent no. 2 are represented by the learned advocates. They have waived the service of notice of appeal upon

them.

The appeal is treated to be ready as regards service.

Liberty to mention.