

M.J. No. 13/19
(Misc. A. No. 06/19)

6.03.19 Both sides represented.

As I have heard both sides already, vide this order, this Misc.(J) case would be disposed off.

This Misc.(J) case is directed against the order dated 17.12.18 passed by learned Munsiff No.1, Morigaon in Misc.(J) Case No.52/18. It is contended that petitioner applied for certified copy of said order and same was obtained on 18.12.18. But as petitioner was suffering from diseases and was on bed rest w.e.f. 15.01.19 to 24.01.19, he failed to prefer appeal within time stipulated. Hence, this case for condonation of delay of 8 (eight) days in filing the instant appeal. Petition is supported by affidavit and verification.

O.Ps vide written objection stated inter-alia that it is only when petitioner obtained notice of appeal in connection with grant of injunction upon Govt. land, but not upon the suit premises. Petitioner preferred this petition for condonation of delay. O.Ps. denied petitioner's suffering from any kind of illness and that he was lying on bed w.e.f. 15.01.19 to 24.01.19 as alleged. O.Ps also highlighted that petitioner neither mentioned the name of disease, nor the name of doctor who treated him. As per O.Ps medical certificate submitted is concocted and O.Ps on above counts, prayed for dismissal of the petition.

Perusal of case record shows that along with this condonation of delay prayer, petition already filed Misc. Appeal No.06/19 which has been directed against order dated 17.12.18 in Misc.(J) Case No.52/18 passed by learned Munsiff No.1, Morigaon. Medical document on pad of Ramani Medical Hall shows on

Contd...

Contd.
6.03.19

perusal that petitioner Hiteswar Barman was advised 10 days of bed rest on 14.01.19. Impugned order is dated 17.12.18. But it appears, this prayer for condonation along with Misc. Appeal has been filed on 25.01.19.

Normally, petitioner/appellant does not gain anything by preferring his case or appeal lately. It appears from materials placed before me that it was petitioner's illness which hampered him to prefer this appeal within time stipulated. It is only inaction, negligence, which should not be allowed to be perpetrated casually. When technicalities are petted against the substantive justice, it is the substantive justice, which should always get priority.

Hence, in consideration of all aspects, with imposition of cost of Rs. 1,000/-, payable to DLSA, Morigaon, delay stands condoned. On submission of receipt from DLSA, Morigaon, effective order in Misc. Appeal No.5/19 would be passed.

This Misc.(J) case stands **allowed** on imposition of cost as stated above.

The Misc.(J) case stands disposed of on contest.

Civil Judge, Morigaon.