

HIGH COURT OF SIKKIM

Record of proceedings

MAC App. No.06/2018

Narendra Kumar Chettri

.... Appellant

Versus

Ashok Kumar Pradhan & Anr.

.... Respondents

Date:20.08.2018

CORAM

HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.

For Appellant : Mr. Ajay Rathi and Mr. Ladong Rinzing Lepcha,
Advocates.

: Mr. Narendra Kumar Chettri, Appellant in
person.

For Respondent No.1 : Mr. Rinzing Dorjee Tamang, Advocate.

For Respondent No.2 : Mr. Thupden G. Bhutia, Advocate.

.....

I.A. No.01/2018

This is an application preferred by the Appellant under Section 5 of the Limitation Act, 1963 for condonation of delay of seven days.

The application explains the delay by stating that the present Appeal was filed on 19.04.2018 within the period of limitation. However, the same was defective. The defect could be cured only after the Appellant's Counsel came back after his treatment at Delhi for Endosteal Implant Surgery on 03.06.2018. It is pleaded that the learned Counsel proceeded to Delhi on 22.04.2018, came back on 03.06.2018, cured the defect and filed it on 04.06.2018. The learned Counsel appearing for the Respondents do not have any objection to the explanation given by the Appellant. However, Mr. Thupden G. Bhutia, learned Counsel appearing for Respondent No.2 would submit that the Appellant has invoked the wrong provision of law i.e. Section 5 of the Limitation Act, 1963 for

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seeking condonation of delay in view of the special provision of Section 173 of the Motor Vehicle Act, 1988, which provides not only the period of limitation but also the power of the High Court to entertain the Appeal after the expiry of the said period of 90 days if it is satisfied that the Appellant was prevented by “*sufficient cause*” from preferring the Appeal in time. There is merit in the submission of the learned Counsel for the Respondent No.2. However, on “*sufficient cause*” being shown even under Section 5 of the Limitation Act, 1963 an Appeal may be admitted after the prescribed period. Quite evidently, the Appellant has shown “*sufficient cause*”. Approaching the High Court under a wrong provision of law should not disentitle the Appellant to show “*sufficient cause*” and seek condonation of delay. The delay is condoned.

MAC App. No.06/2018

The Appeal is admitted for hearing. The learned Counsel for the parties submits that the present Appeal must be decided only on a point of law and therefore, there is no necessity for records being called for and in fact, the matter could be heard finally.

List on 19.09.2018 for final hearing.

Judge
20.08.2018

tsh Index: **yes**/No
Internet: **yes**/**No**