

HIGH COURT OF SIKKIM

Record of proceedings

I.A. No.01/2024
IN
RFA No. 48/2024 (Filing No.)

SHRI SOM KUMAR SUBBA APPLICANT

VERSUS

THE SECRETARY, URBAN DEVELOPMENT
DEPARTMENT & ORS. RESPONDENTS

Date: 15.11.2024

CORAM

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

For Applicant : Mr. N. Rai, Senior Advocate (Senior Legal Aid Counsel) with Mr. Yozan Rai, Junior Legal Aid Counsel, Ms. Tara Devi Chettri, Advocate.

For Respondent : Mr. S. K. Chettri Government Advocate.
Nos. 1 to 5.

For Respondent : None.
Nos. 6A & 6B

For Respondent : Mr. Umesh Ranpal, (Legal Aid Counsel).
No.7. Ms. Rubusha Gurung, Advocate.

For Respondent : Mr. M. N. Dhungel, (Legal Aid Counsel).
No.8

For Respondent : None.
Nos.9 to 11.

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1. This is to consider the condonation of delay application filed by the applicant who seeks to prefer an appeal against the impugned Order dated 30.08.2023. The learned Senior Counsel representing the applicant submits that from the date of the impugned order there is a delay of 139 days. He submits that however, he had preferred a petition under Article 227 of the Constitution of India on 04.12.2023 before this Court which was finally disposed of on 19.03.2024 giving liberty to the applicant to withdraw the Article 227 petition and pursue the right remedy. According to the learned Senior Counsel the present appeal was filed on 10.04.2024. He fairly

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submits that had the counsel been aware that a regular appeal was maintainable against the impugned order the petition under Article 227 of the Constitution of India ought not to have been filed. However, due to the lack of knowledge the learned counsel preferred a wrong remedy and therefore, the delay may be condoned.

2. Mr. S. K. Chettri, learned Government Advocate representing the State vehemently objects to this application. He submits that the applicant has failed to explain the delay of more than 31 days which is not pardonable.

3. This is an attempt on the part of the applicant to file a Regular First Appeal against the impugned order by which the suit filed by him had been rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 on an application by the State.

4. Considering the above facts this Court is of the considered view that a lenient view must be taken on such an application for condonation of delay. It would better serve justice if the case is decided on merits instead. The application is allowed. The delay is condoned.

5. The registry is directed to register the Regular First Appeal and place it for orders on 05.12.2024.

6. List on 05.12.2024.

Judge