

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4845 OF 2017  
(Arising out of S.L.P.(Civil)No.27134 of 2015)

Sri Sukumar Biswas and Ors. ...Appellants

VS.

Sri Uttam Biswas @ Maran Biswas and Ors. ...Respondents

O R D E R

Leave granted.

We have heard the learned counsel for the parties and perused the impugned judgment and order dated 23<sup>rd</sup> April,2015 passed by the High Court of Tripura at Agartala in CRP No.69 of 2013 whereby the High Court has dismissed the Revision Petition filed by the appellants herein under Article 227 of the Constitution of India.

The facts necessary for disposal of this appeal are that the appellant instituted the Title Suit No.106/2006 for declaration of right, title and interest and for recovery of possession in respect of certain property in the Court of the learned Civil Judge, Junior Division No.2, Agartala, West Tripura. Since the original plaintiff's age was about eighty years, he appointed his son, namely, Sukumar Biswas-appellant No.1 as his attorney for conducting the case on his behalf. The suit was dismissed for non-appearance of the plaintiff on 28<sup>th</sup>

November, 2008. Thereafter, an application came to be filed by the plaintiff under Order IX Rule 9 of Civil Procedure Code, 1908 (for short "the CPC") for setting aside the order dated 28<sup>th</sup> November, 2008 with the delay of 283 days in filing the application along with an application filed under Section 5 of the Limitation Act, 1963, for condonation of the said delay assigning serious illness of his wife Smt. Charubala Biswas-the mother of appellant No.1, who later died of long ailment, as a main reason. His application also disclosed that since the original plaintiff and his son were under serious mental shock, they could not pursue the matter; that due to the reasons, which were beyond the control of the plaintiff-appellant, he was unable to approach the advocate. However, subsequently after consulting his counsel, the appellant made an application for setting aside the order dated 28<sup>th</sup> November, 2008 as mentioned above supra. The application for condonation of delay was opposed by the respondents. The Trial Court, on hearing the parties, rejected the application for condonation of delay as well as the application under Order IX Rule 9 of the CPC. The said order is upheld by the High Court in Civil Revision Petition No.69/2013 which is impugned in this appeal.

We have heard the learned counsel for the parties.

It is true that there was some lethargy on the part of the appellants to pursue the matter before the Trial

Court. However, this Court cannot ignore the fact that the original plaintiff's wife was seriously unwell and ultimately lost her life due to prolonged ailment. Plaintiff was aged more than 80 years and hence could have suffered shock and agony. Having regard to the reasons assigned by the appellants and as we do not find any ground to conclude that the said reasons are unacceptable, we proceed to take lenient view, under the facts and circumstances of the case. We are of the considered opinion that one more chance may be given to the appellants by allowing this appeal.

Accordingly, the appeal succeeds. As a consequence thereof, the impugned order of the High Court as also of the Trial Court are set aside. The Trial Court is directed to dispose off the suit on merits as per law at an early date.

However, we direct the plaintiff-appellants to deposit costs of Rs.5,000/- to be paid to the defendants before the Trial Court on the first date of hearing.

.....J.  
[R.K. AGRAWAL]

.....J.  
[MOHAN M. SHANTANAGODAR]

New Delhi;  
March 31, 2017.

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 27134/2015

(Arising out of impugned final judgment and order dated 23/04/2015  
in CRP No. 69/2013 passed by the High Court of Tripura at  
Agarthala)

SRI SUKUMAR BISWAS AND ORS.

Petitioner(s)

VERSUS

SRI UTTAM BISWAS @ MARAN BISWAS AND ORS.  
(With interim relief and office report)

Respondent(s)

Date : 31/03/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.K. AGRAWAL  
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDARFor Petitioner(s) Mr. Pijush K.Roy,Adv.  
Ms. Kakali Roy,Adv.  
Mr. Rajan K. Chourasia,Adv.For Respondent(s) Mr. Avijit Bhattacharjee,Adv.  
Ms. Upma Shrivastava,Adv.  
Mr. Ajoy Ghosh,Adv.UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(Anita Malhotra)  
Court Master(Chander Bala)  
Court Master

(Signed order is placed on the file.)