

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4293 OF 2008
(Arising out of S.L.P. (C) No.3745 of 2004)

Collector, Hooghly and Ors.

...Appellant(s)

Versus

Nirmal Sarkar (D) by Lrs. and Ors.

...Respondent(s)

O R D E R

Heard learned counsel for the parties.

Leave granted.

It appears that a Division Bench of the Calcutta High Court recorded a finding that no sufficient cause was shown for condonation of delay in filing the appeal and, consequently, it dismissed the appeal as barred by limitation. S.L.P. (C) No.21298 of 2000 filed against the said order of the High Court was disposed of by this Court on 8th January, 2001, in the following terms:

“Heard learned counsel for the petitioners.

The submission is that the High Court by inadvertence referred to the impugned order to be dated 15.9.98 which on the face of it is incorrect. The submission is, on, account of this the consideration of appeal and the observation that there was no explanation for the six months is not sustainable.

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We feel, if this be the fact, the proper course open for the petitioners is to move for review in the High Court. In view of this, this special leave petition is dismissed. However, this is without prejudice of the rights of the petitioners to seek its remedy, if any, before appropriate forum.”

From a bare reading of the aforesaid order, it would be clear that this Court was, prima facie, of the view that the High Court was not justified in refusing to condone the delay and dismissing the appeal on the ground of delay. Thereafter, a review application was filed before the High Court. There was delay of nine days in filing the review application after calculating the period of limitation from the date of order passed in the special leave petition. However, the High Court dismissed the review application on the ground that no sufficient cause was shown for condonation of delay and calculating period of limitation from the date of original order dismissing the appeal to be barred on limitation. It also held that the finding recorded in the earlier order that there was no sufficient cause for condonation of delay did not suffer from any error apparent from the record.

Against the aforesaid order, this appeal by special leave has been filed.

Having heard the learned counsel appearing on behalf of the parties, we are of the view that the High Court was not justified in refusing to condone the delay in filing the review application and appeal before it. Accordingly, the

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appeal is allowed, impugned orders are set aside, delay in filing the review application and the appeal is condoned and the appeal is restored to its original file. The High Court shall now dispose of the appeal on merits in accordance with law after giving opportunity of hearing to the parties.

Let hearing of the appeal be expedited.

[B.N. AGRAWAL]J.

[G.S. SINGHVI]J.

New Delhi,
July 10, 2008.