

Misc. (J) 27/2017.

ORDER

14.8.2017.

Parties are represented.

Today is fixed for orders in the instant Misc(J) Case and same is passed accordingly hereinunder :

Petitioner filed petition being numbered 838/17 under Order 41 Rule 3 (A) read with section 151 CPC praying for condoning the delay that has arisen in the filing of the appeal, which petition has been registered as the present Misc(J) Case.

It is the petitioner's case that Learned Munsiff, Bongaigaon vide order dated 7.1.2017 in Misc.(J) Case No. 28/16 in connection with T.S. Case No. 14/16 had rejected their prayer for temporary injunction and that they could come to know about the order of rejection only on 3.2.2017. Petitioner avers that due to the non-recording of the aforesaid order in the cause list, they could not apply for the certified copy of the same earlier only on 4.2.2017 after learning about the passage of the order they applied for the copies of the same and after notification for supply of requisite stamps etc on 28.2.2017 they had supplied the same on 1.3.2017 and received the copy on 2.3.2017.

The petitioner avers that it is not for his willful neglect that he had filed the appeal belatedly. The petitioner further avers that there is sufficient merit in the appeal and great prejudice would occasion if the delay is not condoned. Petitioners prays for allowing the prayer.

The opposite parties entered appearance pursuant to notice and filed their joint written objection. The opposite parties resisted the petitioner;s prayer mainly on the ground that the cause shown vide the petition

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is not satisfactory as the learned Munsiff had pronounced the judgment in presence of both sides in open Court and the question of the petitioner being unaware of the order does not arise. The opposite parties prayed for dismissal of the petition.

Heard both sides.

Perused the case record.

Perusal of the certified copy of the order which is proposed to be impugned in appeal, which has been filed alongwith memo of appeal discloses that the petitioner had applied for the same on 4.2.2017. The petitioners seek to impugn the judgment being highly aggrieved. The order is dated 7.1.2017. If the petitioner is aggrieved, he would not sit back idle if he had intended to impugn the judgment / order for over 20 days, before applying for the certified copy of the order.

Considered the guidelines of the Hon'ble Supreme Court passed in the case of Collector land acquisition Anant Nag Vs. Musstt Katigi reported in 1987 AIR 1353. The Hon'ble Supreme Court in the Musstt Katigi (supra) required the adoption of a justice oriented liberal approach while dealing with petitions for condonation of delay. The Hon'ble Supreme Court further had held that a meritorious matter is not to be thrown out at the threshold on the ground of mere technicalities. In the instant case though the certified copy of the order proposed to be impugned, reflects that it was pronounced in presence of both sides, but non-recording of the same, in the cause list in time gives an edge to the aggrieved party. For the fault of the Court, the party cannot be put at fault. Hence, in the above circumstances, I am inclined to adopt a liberal

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approach and accordingly I am inclined to condoned the delay, but I do so with a costs of Rs. 500/- (Rs. Five hundred).

Misc(J) Case is allowed on contests subject to the payment of costs of Rs. 500/- (Rs. Five hundred).

As dictated.

  
Civil Judge,  
Bangaigaon