

(1995) 01 CAL CK 0004**Calcutta High Court****Case No:** None

Ramen Majumdar

APPELLANT

Vs

Nandita Goswami

RESPONDENT

Date of Decision: Jan. 16, 1995**Citation:** (1995) 1 ILR (Cal) 169**Hon'ble Judges:** S.K. Mookherjee, J; Basudev Panigrahi, J**Bench:** Division Bench**Advocate:** P.K. Banerjee and Anil Das, for the Appellant; Kalidas Bose, for the Respondent**Final Decision:** Allowed**Judgement**

S.K. Mookherjee, J.

This is an application for condonation of delay of 14 days in preferring a First Misc. Appeal before this Court. According to the report of the Stamp Reporter, the appeal would have been in time if filed within November 7, 1994, and having filed on November 21, 1994, the above delay occurred. The impugned order was passed on September 26, 1994, by the learned Judge, Tenth Bench, City Civil Court, Calcutta. The certified copy was applied for on November 7, 1994, after the reopening of the Court after long vacation and was delivered on November 10, 1994; The delay had been sought to be explained mainly on a two-fold basis, (a) the learned Advocate of the trial Court advised that the period of limitation for the appeal was 60 days, and (b) the Court closed and so the copy could not be applied for before the reopening.

2. Copy of the application having been served on the contesting opposite parties, an affidavit-in-opposition had been filed, inter alia, pointing out certain inconsistencies in the case made out by the Petitioner and also absence of any corroborating affidavit from the learned Advocate of the trial Court who allegedly gave wrong advice. Reliance was placed on behalf of the contesting opposite parties Respondent on the principle laid down by the Supreme Court in the case of G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, . The said ratio cannot have any application in the facts of the present case as in the cited case there was a

definite plea that the knowledge of the Appellant was prevented by negative and evasive attitude of the Government pleaders which was somewhat unusual, creating problem of delay in hundreds of cases. In the present case, the inconsistency alleged in the conduct of the learned Advocate of the Court below or on the Petitioner to obtain first the advice of the-said Advocate cannot be said to be very unusual as to disentitle the Petitioner to any relief by way of condonation of the delay. The application for certified copy of the impugned order cannot be said to be belatedly made in the background of the advice by the learned Advocate for the Court below that the period of limitation for the appeal to the High Court was 60 days. We, accordingly, allow the application and condone the delay. The appeal is directed to be registered if otherwise in form. There will be no order as to costs.

Basudev Panigrahi J.

3. I agree.