

GAHC010197612023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/2675/2023

SANTI SAHU
W/O. LT. CHATURI PRASAD SAHU
VILL. RAJYESWARPUR PT-VII
P.O. JHAPIRBOND
DIST. HAILAKANDI
ASSAM
PIN-788163.

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
WATER RESOURCE DEPARTMENT.
DISPUR
GUWAHATI-6

2:THE CHIEF ENGINEER
WATER RESOURCE
ASSAM
CHANDMARI
GUWAHATI-3.

3:THE EXECUTIVE ENGINEER
WATER RESOURCE DEPTT.
HAILAKANDI DIVISION
P.O. and DIST. HAILAKANDI
ASSAM
PIN-788151.

Advocate for : MR. A M BARBHUIYA
Advocate for : SC WATER RESOURCE appearing for THE STATE OF ASSAM and 2
ORS.

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 29-09-2023

Heard Mr. A.M. Barbhuiya, learned counsel for the applicant-petitioner and Mr. B. Goswami, learned Additional Advocate General, Assam assisted by Mr. P. Kakati, learned counsel for all the opposite parties.

2. The instant interlocutory application has been preferred by the applicant-petitioner seeking condonation of 246 days in preferring the connected interlocutory application, MC/69/2023, which has been preferred for restoration of a writ petition, W.P.[C] no. 3728/2017.

3. Mr. Barbhuiya, learned counsel for the applicant-petitioner has submitted that the writ petition, W.P.[C] no. 3728/2017 was listed before the Court on 28.11.2022 in the admission column reflecting the names of Mr. S.K. Das and Mr. S.K. Choudhury as the learned engaged counsel for the petitioner. Mr. Barbhuiya has submitted that the name of Ms. S.B. Choudhury, learned counsel engaged by the applicant-petitioner was wrongly reflected as Mr. S.K. Choudhury in the cause-list published for the day, 28.11.2022 [Annexure-B]. When the writ petition was called up for hearing, the Court finding no one representing the applicant-petitioner, dismissed the writ petition due to non-prosecution. Mr. Barbhuiya, learned counsel for the applicant-petitioner has submitted that the applicant-petitioner had preferred the writ petition, W.P.[C] no. 3728/2017 seeking *inter alia* a direction to the respondent authorities therein to disburse a sum of Rs. 3,97,000/- in respect of the contract-works executed by the applicant-petitioner. Mr. Barbhuiya has beseeched that in the event the writ petition is not restored, the applicant-petitioner will suffer immense prejudice.

4. I have perused the materials in the case records of W.P.[C] no. 3728/2017. The Vakalatnama submitted on behalf of the petitioner has reflected two names viz. Ms. S.B. Choudhury and Mr. S.K. Das as learned counsel engaged by the applicant-petitioner. Though

the name of Ms. S.B. Choudhury is incorrectly reflected in the cause-list, there is no explanation in the instant interlocutory application as to why Mr. S.K. Das did not enter appearance on the date of listing [28.11.2022] when the writ petition was listed. Be that as it may. The Court has taken notice of the fact that the applicant-petitioner has preferred the writ petition seeking disbursal of an amount of Rs. 3,97,000/- which amount, according to the applicant-petitioner, was due from the respondent authorities in the Water Resources Department and in the event the writ petition is not restored to file, the petitioner is likely to be prejudicially affected as regard her claim for the said amount. It is averred that the applicant-petitioner has come to know about the fact of dismissal of the writ petition due to non-prosecution only in the 2nd week of August, 2023.

5. Mr. Goswami, learned Additional Advocate General, Assam representing all the opposite parties has fairly submitted that he has no objection in the event of restoration.

6. Having considered all the aspects including the fact of non-appearance by one of the learned engaged counsel of the petitioner whose name is reflected in the cause-list for the day i.e. on 28.11.2022 and the statements and averments made by the applicant-petitioner regarding the delay caused due to factors not attributable to the applicant-petitioner, this Court is of the considered view that the prayer for condonation of delay made by the applicant-petitioner can be accepted, subject to deposit of appropriate cost. Accordingly, the delay of 246 days in preferring the connected interlocutory application, I.A.[Civil]/2675/2023 seeking restoration of the writ petition, W.P.[C] no. 3728/2017 stands condoned, subject to deposit of an amount of Rs. 3,000/- in favour of the Gauhati High Court Bar Association within a period of 1 [one] month from today.

JUDGE

Comparing Assistant