HIGH COURT OF TRIPURA
AGARTALA

IA No.1 of 2025 in FAO No.4 of 2025
FAO No.4 of 2025

Sri Kishore Deb, S/o Late Subhash Deb, resident of village Murabari, P.O & P.S. Bishalgarh, District – Sejpahijala, Tripura.

…… Applicant/appellant(s).

V E R S U S

1. The Deputy Chief Engineer (Construction), N.F. Railway, Office at Gorkhabasti, Agartala, P.S. NCC, District – West Tripura, PIN-799010.
2. The Land Acquisition Collector, West Tripura, Agartala, PIN-799001.

…… Respondent(s).

For Applicant/appellant (s) : Mr. P.K. Dhar, Sr. Advocate,
Mr. Rahul Debnath, Advocate.

For Respondent(s) : Mr. M. Debbarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

20/06/2025

Heard Mr. P. K. Dhar, learned senior counsel assisted by Mr. Rahul Debnath, learned counsel for the appellant and Mr. Mangal Debbarma, learned Government Advocate, for the respondent No.2-Land Acquisition Collector.

The present appeal preferred under Order XLIII Rule 1(c) of the CPC is directed against the order dated 21.02.2019 passed by the learned Land Acquisition Judge, Court No.4, West Tripura, Agartala in Civil Misc. (Restoration) No.16/2018 which arose out of order of dismissal dated 07.06.2018 passed by the learned Land Acquisition Judge, Court No.4, West Tripura, Agartala in Misc. (L.A) No.42 of 2015 whereby the LA case was dismissed for non-appearance of the claimant.

It appears from the perusal of the memo of appeal that in restoration case the appellant remained un-represented on two dates i.e. on 06.10.2018 and 14.12.2018. On 21.02.2019, the restoration case was dismissed holding that neither has the applicant appeared on a number of dates nor any step was taken to effect notice upon the respondent. Therefore, the learned LA Court found that the conduct of the petitioner showed that he was not interested in pursuing the case. Consequently, the restoration case is dismissed. The present appeal suffers from a delay of 1540 days for condonation of which I.A. No.1/2025 has been preferred.

Mr. P. K. Dhar, learned senior counsel for the appellant submits that such delay has occasioned not on account of any fault of the appellant but due to the lapses on the part of his counsel. The order dated 21.02.2019 was not in the knowledge of his learned advocate as she was absent on that day. She came to learn about the order in September, 2019. Thereafter, she prepared an appeal against the said order but out of mistake she did not prefer such appeal before the Hon'ble High Court. Without filing such appeal, the learned advocate thought that she had filed such appeal and informed the appellant that his appeal was filed. In the meantime, COVID-19 intervened in the first part of 2020 and all Court works were suspended. The Apex Court vide order dated 23.03.2020 passed in Suomoto Writ Petition (C) No.03/2020 extended the period of limitation which was lastly extended up to 28.02.2022 with further 90 days' period. Since the appellant was under the impression that the appeal has been filed, he could do nothing further. Only on 18.11.2024, while searching about the file, the appellant came to learn that no appeal as such is pending before the Hon'ble High

Court. Thereafter, he discussed with his learned advocate who could understand that she had committed serious mistake by non-filing the appeal actually. Again a certified copy of the impugned order dated 21.02.2019 was obtained on 29.01.2025. Thereafter the appellant contacted his learned counsel through whom the instant memo of appeal was prepared and filed. The appellant has all along suffered due to the delay caused by his erstwhile counsel in non-filing the appeal. The appellant would suffer irreparably if the delay is not condoned. The LA Act, is a beneficial piece of legislation. The claimant has sought enhancement of the award which could be denied if the LA case is not decided on merits.

Mr. Mangal Debbarma, learned Additional Government Advocate, appearing for the Land Acquisition Collector, submits that the main contesting party is the Railways which has not yet been noticed to appear. He, however, submits that the delay of 1540 days is inordinate and the explanation is also not satisfactory.

I have considered the submission of the learned counsel for the appellant and taken note of the grounds urged for condonation of delay of 1540 days in preferring the instant first appeal under Order XLIII Rule 1(c) of the CPC against the dismissal of the restoration case for default due to non-prosecution for several days on the part of the claimant. This Court upon hearing the parties is of the considered opinion that not only is the delay huge but the explanation furnished is not satisfactory at all. A litigant cannot rest on the plea that he was wholly unaware of lack of any step taken by his counsel for preferring an appeal against the dismissal of the restoration case what to speak of the main case which was also dismissed for

non-prosecution. The extended period of limitation as per the order of the Apex Court in Suomoto Writ Petition (C) No.03/2020 also came to an end in February, 2022 with further 90 days' grace period but the present appeal has been preferred on 16.06.2025 almost three years thereafter. Such a conduct of any litigant cannot be encouraged. The dismissal of the main LA case and its restoration has attained finality long back, which should not be disturbed at the instance of a non-diligent litigant like the present appellant.

As such, this Court does not find any sufficient grounds made out for condonation of the huge and inordinate delay of 1540 days in preferring the instant appeal.

Accordingly, IA No.1/2025 is rejected. Consequently, the FAO No.4/2025 also stands dismissed.

Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ

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