

Party Name : SANKAR SARKAR & ORS Vs HARE KRISHNA SARKAR & ORS

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

These two C. M. applications are being disposed of together. C.M. application No.87 of 2015 has been filed for restoration/re-admission of the appeal dismissed in default on 11th November, 2011. The 2nd application is for condoning the delay of 3 years 8 months 15 days in filing the application for restoration/re-admission.

The Regular Second Appeal in question was filed in the year 2000.

On 12.08.2010 the second appeal was dismissed in default. Thereafter the same was restored on 28.09.2010. The matter was then adjourned on a number of occasions and came up before the Court on 11.11.2011 when none appeared on behalf of the appellant. The order reads as follows:

**“None appears for the parties despite calling the matter twice.
In view of above, this appeal is dismissed for non-prosecution.
Interim order, if any, shall stand vacated.”**

These two applications have been filed on 28.07.2015 more than 3(three) years and 8(eight) months after the original appeal was dismissed in default.

In the application for condonation of delay, the reasons for condonation given are as follows:

“3. That on the date when the appeal was dismissed for default the Ld. Counsel for the appellant Sri Debesh Chandra Ray was all along present except that sometime before the close of court hours. Shri Ray had the impression that the matter having been listed last part of the hearing list may not be called out or reached for hearing on that date. The Ld. Counsels for Appellant bonafide thought that matter was pending for hearing and did not know that the appeal was dismissed for default on 11.11.2011. Thereafter this petition along with an application for condonation of delay in filing this petition has been prepared and is being filed today.”

In case learned counsel for the appellant was present during the day the least that was expected was that at the end of the day or the next day he should have found out what has happened to the appeal. He cannot wait for 3(three) years and 8(eight) months to find out whether the appeal was dismissed in default or not.

I, therefore, find no reason to condone the delay in filing the application for restoration/re-admission which is accordingly dismissed. Consequently, the application for restoration is also dismissed.