

Party Name : KRISHNA BHATTACHARJEE (CHOUDHURY) Vs SARATHI CHOUDHURY

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA THE HONBLE MR. JUSTICE S.C.DAS

This is an application for condoning 2058 days delay in filing the application for readmission of appeal, which was dismissed in default on 18.07.2009.

The case set up by the petitioner is that she was never informed by her counsel that the case was dismissed in default on the same date.

We accept this fact to be true. However, even as per the averments made in the petition, according to the petitioner, on 05.11.2011 she came to know about the fact that her appeal had been dismissed in default. On that day, the respondent-husband was deposing before the learned Judicial Magistrate, 1st Class, Agartala, West Tripura in Misc.3206 of 2010 and at that time, counsel of the respondent-husband had shown the order dated 18.07.2009 passed by this Court whereby the appeal had been dismissed in default.

Therefore, it is the duty of the petitioner-wife to explain why she did not approach this Court after 05.11.2011. Her explanation as given in the petition is that she was ill and she was treated for hypertension and due to her ill health, she could not take the initiative of filing an application for restoration of appeal.

It is obvious that the petitioner had legal aid because she had filed a petition under the Domestic Violence Act and there was a matrimonial case also pending. The petitioner has not annexed the medical evidence with the application for condonation of delay, but the same has been attached with the restoration petition and we are taking the same on record. The first certificate only shows that she is a patient of obesity suffering from mild bronchial asthma. She has only been advised lifestyle modification and there is no bed rest advised. None of the certificate which has been produced on record shows that the petitioner was in such a condition that she could not approach the Court. She has been visiting private doctors for consultation and over a period of 4 or 5 years, any human being would attend the doctors at least once or twice a year for mild diseases like the once which are reflected in the medical record produced.

Therefore, we find no merit in the application and the same is accordingly dismissed.