

Party Name : SUDHIR BISWAS & ANR Vs THE STATE OF TRIPURA & ORS

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THE HONBLE MR. JUSTICE S.C.DAS

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Heard learned counsel, Mr. P.K. Pal for the petitioners, learned counsel, Mr. A. Ghosh for the State-respondents and learned counsel, Mr. G.K. Nama on behalf of learned counsel, Mr. D.K. Biswas for respondent Nos.4 and 5.

By filing this petition under Section 5 of the Limitation Act the petitioners prayed for condoning delay of 409 days in filing the connected IA No.155 of 2015 seeking restoration of WP(C) 515 of 2005, which has been dismissed for default on 11.07.2014.

It is submitted by learned counsel, Mr. Pal that the petitioners engaged learned senior counsel, Mr. B. Das for conducting the case and on 11.07.2014, the date fixed for hearing of the Writ Petition, learned senior counsel, Mr. Das while went for a natural call at that time the case was called and since learned senior counsel, Mr. Das was absent it was dismissed.

The petitioners came to know about the dismissal of the case only on 25.05.2015, and thereafter he engaged learned counsel, Mr. P.K. Pal to file the present petition on 24.08.2015.

It is submitted by learned counsel, Mr. Pal that the delay was bona fide and there was no negligence or inaction on the part of the petitioners and, therefore, learned counsel, Mr. Pal prayed for restoration of the writ petition for disposal on merit as otherwise the poor petitioners shall suffer an irreparable loss.

The respondents did not file any written objection. However, learned counsel, Mr. Ghosh appearing for the State-respondents submits that there is no explanation at all for the delay in filing the petition for restoration of the Writ Petition. He has further submitted that the petitioners must be prevented with sufficient cause in taking steps in filing petition for restoration. Mere negligence and absence of the lawyer cannot be a ground for condonation of delay. Learned counsel, Mr. Nama also made similar submission.

The Writ Petition is of 2005. Records shows that on 11.07.2014, there was no representation on behalf of the petitioners and hence, the writ petition was dismissed referring to earlier order dated 29.05.2014 on which date it was specifically ordered that no further adjournment would be allowed.

Be that as it may, let us now see whether the petitioners were prevented with sufficient cause in not preferring the restoration petition in time.

The simple case of the petitioners is that on the date fixed for hearing learned senior counsel, Mr. Das went for a natural call and at that time the case was dismissed. The petitioners came to know about the dismissal of the case only on 25.05.2015 from the clerk of learned senior counsel. It is, therefore, evident that it was within the knowledge of the counsel for the petitioners that the case was dismissed on 11.07.2014.

Neither the lawyers took any step immediately for restoration of the petition nor petitioners took steps to do so. According to the petitioners they were not informed, they came to know only on 25.05.2015 from the clerk of the learned engaged lawyers. Whereas no affidavit is filed either by the lawyer or the lawyer@@@@@s clerk.

The restoration petition along with present condonation petition was filed on 24.08.2015 that is after another three months.

Practically there is no explanation at all for this long delay in filing the petition. The Supreme Court in case of **G. Ramegowda Vs. Special land Acquisition Officer reported in AIR 1988 SC 897**, has held that there is no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel, there is no reason why the opposite party should be exposed to a time barred appeal.

No doubt the question of limitation should be liberally considered but that it does not mean that any explanation whatever it is given should be accepted.

In this case, I find no convincing explanation at all. There was deliberate and willful negligence and inaction on the part of the petitioners and hence, the petition seeking condonation of delay stands dismissed.