

Party Name : ORIENTAL INS. CO. LTD Vs SASHI MOHAN CHAKMA & ORS

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THE HONBLE MR JUSTICE U. B. SAHA

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The instant petition is filed for condoning the delay of 233 days in filing the fresh restoration petition for restoring the writ petition bearing No. WP(C) 44/2002 which was dismissed for default by order dated 25.03.2014.

Mr. Gautam, learned counsel while urging for condoning the delay submits that the writ petition was dismissed on 25.03.2014. Thereafter, a restoration application was filed on 25.11.2014 but due to some formal defects the said application was withdrawn and the instant petition is filed on 10.12.2014. he also submits that the petitioner has explained the delay in paragraph 2, 3 and 4.

This Court has gone through the explanation. It appears that except the contention that the delay has been properly explained, no other specific explanation is there regarding 233 days of delay. It also appears from the record that on earlier occasion also the writ petition was dismissed for default and the same was subsequently restored.

A condonation petition is generally considered liberally but in the instant case, there is no explanation at all as to why there was a delay of 233 days in preferring the restoration application except the contention that on earlier occasion the restoration petition was withdrawn due to some mistake.

The respondent No. 4 by way of filing objection submits that the actual delay caused by the petitioner is not 233 days but it is 260 days.

There may not be day to day explanation of delay but some sort of explanation is necessary to satisfy the Court that the delay was not caused for any negligence on the part of the petitioner.

Here in this case, it is the admitted position that on earlier occasion the restoration petition was sworn by the conducting lawyer in place of the petitioner. A lawyer is very much aware that he is not authorised to swear an affidavit on behalf of the petitioner as per the rules. However, the reasons for delay as explained in this petition are not satisfactory. Thus, the instant application is dismissed.