

14.07.2023
Court-42
Item-4

WPA 12023 of 1994
Kamala Coomar & Ors.
Vs
The State of West Bengal & Anr.

For the petitioner: Mr. Amritam Mandal, Adv.,
 Ms. Ananya Chakraborty, Adv.,

CAN 3 of 2022 is an application praying for condonation of delay in filing an application for recalling of the order dated 13th March, 2015 passed by the Hon'ble Justice Asish Kumar Chakraborty, His Lordship then was dismissing the instant writ petition for default. It is submitted by the petitioners that the writ petition was filed in 1994 praying for an order commanding the respondent not to grant raiyat statements by giving patta to the 3rd person in respect of land in question. In spite of receipt of the notice dated 5th February, 1994, the respondent authorities settled the land in favour of the 3rd parties. The petitioners preferred contempt application against the arbitrary act committed by the respondent during the pendency of the writ petition but the Hon'ble Justice Indira Banerjee, as Her Ladyship then rejected the contempt petition and discharged the rule and leave application filed by the petitioner being RVW 129 of 2010 which was also rejected by the Hon'ble Justice Indira Banerjee on 24th August, 2004. Against the said order the petitioners preferred an appeal being MAT 2004 of 2012. However, the said appeal was dismissed for non-prosecution by the Division Bench of this Court presided over by the Hon'ble the Chief Justice on 9th April, 2014.

Subsequently on 13th March, 2015 the writ petition was dismissed for default.

It is submitted by the petitioners that the learned Advocate on record was on medical leave for being seriously ill at the point of time and he was aware of the fact that the writ application was dismissed for default on 13th March, 2015. The petitioner being a old lady was not in a position to take proper step in the said application. Subsequently in the month of October, 2019 she came to know that the writ petition was dismissed for default thereafter she has filed the instant application praying for condonation of delay in filing a new application for restoration of application. The petitioners have also filed another application (CAN 4 of 2022) for restoration of the writ petition.

From the petition under Section 5 of the Limitation Act it is ascertained that there is 2719 days delay in filing the application for restoration of the writ petition. From the averment made in the instant petition I find that the petitioners have failed to prove that that were prevented by sufficient cause in attending the hearing of the writ petition on 13th March, 2015.

It is common trend that whenever an application is dismissed for default the restoration application and the application for condonation of delay are filed by some other learned Advocate stating that the previous learned Advocate did not take proper step in conducting the writ petition or civil appeal or any application, as the case may be. This Court is aware of the fact that while hearing an application for condonation of delay, a Court should not take a pedantic approach and demand explanation for each days delay. However when an application is filed after a lapse of about 8 years it is the duty of the Court to see as to whether the defaulting party was diligent enough to conduct his case.

In the instant case the petitioners failed to prove their due diligence and this Court has no other alternative but to hold that the petitioner have hopelessly failed to explain delay for condonation. Accordingly the application under Section 5 of the Limitation Act is dismissed.

In view of the dismissal of the application under Section 5 of the Limitation Act, application for restoration of the writ petition is also dismissed.

(Bibek Chaudhuri, J.)