

14.07.2023
Court-42
Item-6

WPA 13005 of 2005
With
CAN 3 and CAN 4 of 2023

Gangadhar Sakha & Ors.
Vs
State of West Bengal & Ors.

For the petitioner: Mr. P.C Das, Adv.,
Ms. Soma Chowdhury (Bandhu), Adv.

This is an application under Section 5 of the Limitation Act filed by the petitioner praying for condonation of delay in filing the application for restoration of the abovementioned writ petition by recalling the order dated 29th January, 2015.

It appears from the application that the petitioners filed the abovementioned writ petition on 4th July, 2005. The writ petition was admitted for hearing by a Co-ordinate Bench of this Court on 26th July, 2005. Direction was issued for affidavit and interim order of status-quo was passed. It also appears from the record that subsequently the instant writ petition came up for hearing on number of occasion before the Bench of this Court having determination. It also appears that vide order dated 6th May, 2010 the writ application was dismissed for default. Subsequently, it was restored to its file again on 29th January, 2015. The writ petitioner appeared before the concerned Bench when the Hon'ble Tapabrata Chakraborty, J. dismissed the writ petition for default.

It is alleged by the petitioners that erstwhile learned Advocate did not communicate to the petitioners regarding dismissal of the writ petition for default. On the other hand whenever the petitioners enquired into the matter, the learned Advocate assured them that the writ petition

is pending. In or about March, 2023, the petitioner came to know from the present learned Advocate that writ petition was dismissed for default way back on 29th January, 2015. Thereafter, the petitioners have preferred an application for restoration of the writ petition by recalling order dated 29th January, 2015 along with another application under Section 5 of the Limitation Act.

The abovementioned two applications have been filed after a lapse of 3027 days. In the application for condonation of delay, the petitioners have stated that the erstwhile Advocate told them that that writ petition is pending. However the petitioners were not informed that it was dismissed for default on 29th January, 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 petitioners 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.)