

AD-03
Ct No.16
26.02.2025
TN

SA 85 of 2018
IA No: CAN 3 of 2017
(Old No: CAN 8694 of 2017)
CAN 4 of 2018
(Old No: CAN 5045 of 2018)
CAN 5 of 2024
CAN 6 of 2024

Sri Rabin Kumar Ghosal and others
Vs.
Asit Kumar Biswas, since deceased, replaced by Jamuna
Rani Biswas and others

Mr. Sandip Das

....for the appellants

Mr. Debasis Sur,
Mr. Himadri Sh. Paul

....for the respondents

In re: CAN 5 of 2024
CAN 6 of 2024

1. CAN 6 of 2024 has been filed for condonation of delay in filing CAN 5 of 2024, the latter being a restoration application.
2. Learned counsel for the appellants submits that the matter got dismissed for default on December 03, 2019. It is submitted that the learned Advocate appearing for the appellants had missed out the matter in the list. Thereafter, on April 28, 2020, the wife of the appellant no.1, who had been all along looking after the case, died, upon which the appellant no.1 suffered from serious mental depression, for which he is still bedridden.

3. Later on, the appellants came to know from rumours in the locality, where the respondents also live, that the appeal had been dismissed and thereafter the son of the appellant no.1, the present deponent, came to the court and learnt about the dismissal. It is further submitted that a talk of settlement continued for several months even after the dismissal for default and there was an assurance on the part of the respondents that the matter was likely to be settled, which was another reason why the appellants had not taken information in the meantime about the appeal.
4. Learned counsel appearing for the respondents submits that proper explanation for the delay has not been furnished. Moreover, the period of delay has not been mentioned.
5. Although learned counsel for the respondents, in his usual fairness, submits on instruction that talks of settlement were going on between the parties, however, it is submitted that the prolonged delay of several years in filing the present application ought not to be condoned.
6. Upon a careful perusal of the averments made in the application, we find that there is some justification in the appellants not taking information of the matter in the meantime in view of the talks of settlement going on between the parties. Furthermore, the period during the Pandemic restrictions ought also to be

deducted as per the several orders of the Supreme Court in that regard.

7. Also, the non-mention of the exact number of days of the delay is not fatal to the condonation application.
8. On an overall consideration of the averments made in the application, we find that sufficient cause has been made out for the condonation of delay in filing the restoration application as well as for restoring the appeal to its original file and number.
9. However, due to the suffering of the respondents and the harassment caused to them for the condonation of delay and the restoration of the appeal being filed after a prolonged period spanning several years, during which valuable rights have accrued in favour of the respondents because of the dismissal of the appeal for default in the interregnum, the respondents ought to be compensated by costs.
10. Accordingly, CAN 6 of 2024 is allowed, thereby condoning the delay in filing CAN 5 of 2024. CAN 5 of 2024 is also allowed on contest, thereby recalling the order dated December 03, 2019, whereby SA 85 of 2018 had been dismissed for default, and restoring the said second appeal to its original file and number, subject to costs of Rs.20,000/- being paid by the appellants to the respondents within a fortnight from date.

11. It is made clear that in default of such payment, the above order shall stand automatically recalled without further reference to the court.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)