

03.12.2024
SI No.6
Court No.12
(gc)

**FMA 1247 of 2019
CAN 1 of 2024
CAN 2 of 2024**

**Union of India
Vs.
Nilufa Yasmin & Ors.**

Mr. Bhudeb Chatterjee,
Mrs. Priti Jain
...for the Appellant.
Mr. Aman Kumar Singh
...for the Respondents.

**Re: CAN 2 of 2024
With
CAN 1 of 2024**

1. This is an application for condonation of delay of 1771 days in filing the application for restoration. The appeal was dismissed for default on 8th July, 2019. It appears from record that since 22nd July, 2016, the appellant was not represented and took no interest in the matter whatsoever. The order dated 8th July, 2019 records such facts and thereafter the appeal was dismissed for default. The application for restoration was filed with a prayer for condonation of delay on 20th May, 2024. The parties have filed their affidavits.
2. A prayer for condonation of delay can be allowed provided the petitioner is able to

disclose sufficient cause for the delay. There is no explanation offered either in the petition or in the affidavit-in-reply disclosing the reason for not being able to file the application for restoration within the period of limitation. The matter is pending since 2015 and it would appear from the order dated 22nd July, 2016 that the petitioner was directed to deposit Rs.100/- positively within four weeks from that date, failing which the appeal shall stand dismissed. In fact, such defect was not cured, by that time the coordinate bench dismissed the appeal on the ground of non-appearance, that is, on 8th July, 2019.

3. It is submitted on behalf of the petitioner that on 27th November, 2024 deficit court fees have been deposited in the department. However, the department could not have accepted the said deficit court fees without leave of the Court. The petitioner did not make any application for extending the time to put in the deficit court fees. Even when the application for restoration was filed, no prayer was made for extension of time to put in the deficit court fees. The Court cannot condone the delay unless the applicant is able to show sufficient cause for not preferring the appeal or making the application within the period of

limitation. There is no explanation for the delay in filing the application which is more than five years and valuable right has accrued in favour of the respondents by reason of this long passage of time.

4. On such consideration, the application for condonation of delay being CAN 2 of 2024 stands dismissed.
5. In view of dismissal of the application for condonation of delay, the application for restoration being CAN 1 of 2024 also stands dismissed.
6. However, there shall be no order as to costs.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)