

21.12.2023
Sl No.2
Court No.8
(gc)

FMA 1245 of 2019
CAN 3 of 2019 (Old No: CAN 11204 of 2019)
CAN 4 of 2019 (Old No: CAN 11205 of 2019)

The Executive Engineer, Teesta Canal
Division –I & Anr.

Vs.

M/s. Asok Bhattacharya & Ors.

Mr. Arindam Mondal,
Ms. Srijani Mukherjee,
...for the Appellants.

Re: CAN 3 of 2019
(Old No: CAN 11204 of 2019)
With
CAN 4 of 2019
(Old No: CAN 11205 of 2019)

1. In spite of service the respondents are not represented, nor any accommodation is prayed for on behalf of the respondents.
2. It is submitted on behalf of the appellants that the award has been put to execution and unless such protection is given to the appellants with regard to the enforcement of the said award, the appeal would become infructuous. The award-holders are not represented. They were not represented even on the earlier occasion.
3. The appeal was dismissed for default on 9th July, 2019 and the application for restoration was filed on 22nd November, 2019. The application for restoration is filed along with an application for

condonation of delay of 102 days in filing the application for restoration of the appeal. Thereafter this matter appeared on 28th February, 2020 when a direction was given for listing the matter after three weeks with the observation that in the event the respondents are not represented, the Court may proceed with the matter in absence of the respondents. The appellants, however, did not mention this matter. Thereafter, the matter was listed on 19th December, 2023 on the prayer of the learned Counsel for the appellants showing urgency as the execution application was fixed before the X-Mas Vacation. We directed service of notice upon the respondents. In spite of service, the respondents are not represented.

4. Sufficient cause being shown for non-appearance of the learned Counsel for the appellants when the appeal and the connected applications were dismissed for default. The order dismissing the appeal and the applications dated 9th July, 2019 is recalled. Accordingly, the appeal and the connected applications are restored to its original file and number.

5. Accordingly, both the applications are disposed of.

6. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)