

19th July, 2024
(D/L No.34)
Ct. No.4
(SKB)

**F.A.103 of 2019
With
CAN 3 of 2019 (Old CAN 966 of 2019)**

Barun Lama and another
Versus
The Mahabodhi Society of India

Mr. Bidyut Kr. Banerjee,
Mr. Antarik Dawn
... for the appellant.

Re: CAN 3 of 2019 (Old CAN 966 of 2019)

1. Heard learned counsel for the appellants/ applicants as well as the learned counsel for the respondent.
2. The appellants' application under Section 5 of the Limitation Act stood dismissed in default of appearance.
3. The present application has been filed for restoration of the applications being CAN 3461 of 2018 and 3462 of 2018 and the appeal.
4. The reason assigned is a personal ground of the learned counsel for the appellants, that on the fateful date he was engaged in the yearly Shradh Ceremony of his parents. Such compelling circumstance kept him away from his profession commitments resulting in dismissal of the application in default.

5. The learned counsel for the respondent has opposed the prayer.
6. We find that the reasons stated in the application constitute sufficient cause for restoration of the application and appeal. The same stands restored to its original file and number.
7. Upon going through the order dated 02.01.2019, we find that the appeal and application being CAN 3462 of 2018 were also dismissed as a consequence of dismissal of CAN 3461 of 2018, which stood dismissed in default of appearance. The condonation application being CAN 3461 of 2018 is yet to be considered on merits. The dismissal of appeal and CAN 6462 of 2018, thus also essentially a dismissal in default.
8. The application being **CAN 3 of 2019 (Old CAN 966 of 2019)** is allowed.
9. Liberty to mention for listing of CAN 3461 of 2018.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)