

**18.08.
2023**

Ct. No. 04

Ab

FA 103 of 2011

IA No. CAN 3 of 2019 (Old No. CAN 11354 of 2019)

IA No. CAN 4 of 2019 (Old No. CAN 11355 of 2019)

Hafizar Rahaman and another

Vs.

Abdul Hossain.

Mr. Dhananjay Banerjee,

Mr. Surojit Basu,

Ms. Oindrila Ghosh.

... for the appellants.

**Re: CAN 3 of 2019 (Old No. CAN 11354 of 2019 &
CAN 4 of 2019 (Old No. CAN 11355 of 2019)**

These are the applications for restoration of the appeal upon condonation of delay.

It has been indicated in the aforesaid applications that the learned Advocate, who was entrusted to appear in the instant matter, did not appear when the matter was called on and dismissed for default. It is further stated that the said learned Advocate did not communicate the factum of dismissal of the appeal for default to the appellants and when the matter was taken up in the trial court, it was disclosed by the other side that the instant appeal has been dismissed and immediately thereafter another learned Advocate was contacted, who drafted the petition for restoration and also the application for condonation of delay.

Despite service of the aforesaid applications, there is no appearance on behalf of the respondent. It is submitted by the learned Advocate for the appellants that the copy of the application for restoration and the condonation of delay was sought to be served upon the learned Advocate, who appeared for the respondent in the instant appeal, but refused to accept the same as the matter was dismissed for default.

Be that as it may, since service has been effected

upon the respondent himself, we do not find any impediment in proceeding to decide the instant applications.

Considering the facts disclosed in the aforesaid applications, we do not find that the appellants can be blamed for any negligence and/or laches on their part. The laches of the learned Advocate should not make the litigant to suffer as he reposed confidence upon the said learned Advocate that he would appear in the matter and would take all steps for the best interest of his client.

We, thus, find that the appellants were prevented by sufficient cause in not only filing the application for restoration but also making out a sufficient cause for delay in taking out the said application within the statutory period.

Accordingly, both the applications are allowed.

The delay in filing the application for restoration is hereby condoned. The appeal is restored to its original file and number.

Learned Advocate for the appellants is directed to communicate this order to the respondent by speed post and shall file affidavit of service as and when the matter would be listed.

(Harish Tandon, J.)

(Ajay Kumar Gupta, J.)

