

14.2. 2025
item No.2(SL)
n.b.
ct. no. 24

SA 472 of 1996

with

IA No. CAN 2 of 2005(Old No. CAN 539 of 2005)

+

CAN 4 of 2012(Old No. CAN 10716 of 2012)

+

CAN 5 of 2021(not here)

+

CAN 6 of 2025

Smt. Bjharati Sarkar
Vs.
Sri Madhusudhan Goswami

Mr. Debdutta Basu,
..... for the appellant

CAN 5 of 2021 is an application for restoration of the second appeal, which was dismissed for default on March 5, 2019.

CAN 6 of 2025 is an application under Section 5 of Limitation Act for condonation of delay in preferring CAN 5 of 2021.

CAN 5 of 2021 is not in record. Department is directed to place the CAN 5 of 2021.

Copy of application being CAN 5 of 2021 be handed over by the learned counsel for the appellant. Let the copy be taken on record.

In pursuance to the direction of this Court, appellant has served the application being CAN 5 of 2021 as well as CAN 6 of 2025 upon the respondent.

Affidavit of service filed by the appellant is taken on record.

It appears from the affidavit of service that the service upon the contested respondent nos. 1 and 2 is completed.

Despite service, none appears on behalf of the respondents.

Learned advocate for the appellant submits that the application being CAN 6 of 2025 has been filed by delay of 994 days.

It is submitted that, the appellant is an old lady. Her husband used to look after the second appeal. Her husband expired in the year 1997. Since then she was dependent upon the learned counsel for the appellant to conduct the instant second appeal. It is the case of the appellant that on March 5, 2019 when the matter was called, the learned counsel for the appellant was not present as he was suffering from viral fever. He further submits that due to the absence of learned counsel, this court has dismissed the second appeal for default on March 5, 2019.

He further submits that the appellant could not take proper steps for restoration of the appeal due to her personal ailment in the entire period of time, she was admitted several hospitals and undergone surgery. She prayed for necessary order of the restoration of the second appeal.

Heard learned counsel, perused the application being CAN 6 of 2025. Annexure of the application contained several medical documents wherefrom it appears that the appellant is an old lady and was suffering from several ailments. It further appears that she was admitted different hospitals and also undergo surgery during that period.

Considering the entire aspect, it appears to me that the appellant has demonstrated some sufficient reasons for not preferring the application being CAN 5 of 2021 within statutory period.

Considering the same, the reasons for causing delay appears to be sufficient and the same is hereby accepted. Accordingly, application being CAN 6 of 2025 is considered and allowed. Delay in preferring the application being CAN 5 of 2021 is hereby condoned.

Thus, CAN 6 of 2025 is disposed of.

In re. CAN 5 of 2021

This is an application for restoration of the second appeal by setting aside the order dated March 5, 2019. It appears that the delay in filing the instant application has already been condoned in pursuance to CAN 6 of 2025. Accordingly, the application being CAN 5 of 2021 is considered and allowed. The order of dismissal passed by this Court on March 5, 2019 is hereby recalled. Second appeal is hereby restored to its original file and number.

Accordingly, CAN 5 of 2021 is disposed of.

The TCR has already been send back to the learned Trial Court.

Thus, the department is directed to call for the TCR as early as possible through Special Messenger Cost to be borne by the applicant.

The appellant is directed to submit the Special Messenger Cost within a week from date.

The appellant is further directed to serve upon the respondents regarding the restoration of the appeal.

The appellant is further directed to take steps in respect of deceased proforma respondents.

Let the matter go out of list.

Parties are liberty to mention.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)