

13.12.2022

**ASR
76.**

**SAT 489 of 2018
With
CAN 2 of 2022
With
CAN 3 of 2022**

**Sankar Saha & Ors.
Versus
Dipali Bose & Ors.**

Mr. Dinendra Nath Chatterjee

.....for the appellants

An affidavit of service is on record.

Learned counsel for the appellants/petitioners submits that the respondents have been duly served.

None appears for the respondents.

The appeal **SAT 489 of 2018 (Sankar Saha & Ors. -Versus- Dipali Bose & Ors.)** was dismissed for default by a Division Bench of this Court on 6th December, 2019.

On 6th September, 2022, the restoration application (CAN 2 of 2022) accompanied by an application for condonation of delay (CAN 3 of 2022) was filed.

The delay is close to 1500 days.

We have examined the grounds.

They only relate to the learned lawyer Direndra Nath Chatterjee to whom the appellants entrusted the matter.

It appears from the averments made in paragraph 10 of the restoration application that he was seriously ill from the middle of 2019.

He was suffering from gall stone problem followed by Covid and a very serious condition of the heart.

Ultimately, in February, 2022 he had to undergo a bypass surgery of the heart.

It was only in August, 2022 that the learned lawyer made a partial recovery and asked his clerk to find out the fate of the appeal.

He reported that the appeal has been dismissed for default.

Thereafter steps were taken immediately for restoration of the appeal by filing the said application.

Undoubtedly, the learned lawyer was suffering from a serious illness for quite sometime. He may not have been in a position to keep watch of the appeal.

More importantly there does not seem to be laches on the part of the appellants. Having entrusted the matter to a lawyer they were entitled to entertain the notion that he would take adequate care of the matter.

If we are to dismiss this application today, the appellants would be suffering without any fault on their part.

Considering all these factors, we hold that sufficient cause has been shown. The

Section 5 application (CAN 3 of 2022) is allowed.

The order dated 6th December, 2019 is set aside.

The appeal is restored to its original file and number.

The application for restoration (CAN 2 of 2022) is also allowed.

Liberty is granted to the learned Advocate for the appellants/petitioners to mention the appeal for hearing.

(I. P. Mukerji,J.)

(Biswaroop Chowdhury,J)