

FMA 356 of 2018

with

IA No. CAN 4 of 2021

[The District Magistrate & Collector, Howrah & Ors.
Vs. Shanti Devi Jaiswal (Deceased) represented
by Pradip Jaiswal & Ors.]

Mr. Supratim Dhar, Sr. Adv.

Mr. Amrit Lal Chatterjee

.... For the appellants

Mr. Jahar Lal De, AGP

Ms. Debarati Sen (Bose)

..... For the State respondents

Ms. Reshmi Ghosh

Ms. Upasana Banerjee

**..... For the writ petitioners/
Respondents**

Ms. Mekhla Sinha

**..... For *proforma*-respondent
nos. 8 & 9**

Re: IA No. CAN 4 of 2021

The present application has been filed praying for restoration of the appeal dismissed for default on 12th March, 2020 upon condonation of the delay in filing the restoration application.

Mr. Dhar, learned senior advocate appearing for the appellants, who are the State and its functionaries, submits that the appeal was meritorious and as such, the Hon'ble Appeal Court intervened and passed an interim order staying the operation of the judgment impugned. As per the direction of the Hon'ble Appeal Court, paper books were also filed. However, when the appeal came up for hearing before a coordinate Bench of this Court on 12th March, 2020, none appeared on behalf of the

appellants and as such, the same was dismissed for default.

Drawing our attention to the averments made in the application, Mr. Dhar argues that the absence of the learned advocate appearing for the appellants before the Court on 12th March, 2020 and the delay in filing the restoration application was neither deliberate nor intentional. On 12th March, 2020, the learned advocate engaged on behalf of the appellants could not appear before the Court as he was engaged in another matter. Subsequent thereto, immediate steps were taken for filing the restoration application. However, in the midst thereof, the pandemic period intervened and though the restoration application was filed in the month of March, 2021, immediate steps could not be taken for enlistment and hearing of the same. Reliance has been placed upon the order passed by the Hon'ble Supreme Court '*In Re: Cognizance for extension of limitation*'.

Ms. Ghosh, learned advocate appearing for the writ petitioners/respondents vehemently opposes the appellants' prayer for condonation of delay in filing the restoration application and for recalling of the order dated 12th March, 2020 and submits that the averments made in the restoration application are not supported with any document whatsoever. The same has been preferred with the sole intent to delay the proceedings.

She submits that the writ petition was disposed of way back in the year 2014 and the writ petitioners are

languishing before this Court for a period of about 10 years. The delay in filing the restoration application is totally attributable to the appellants and in the said conspectus, the application needs to be dismissed.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Records reveal that by an order dated 24th February, 2016 the Eastern Railway represented by the General Manager, Calcutta as well as the Special Acquisition Officer (General), Howrah were impleaded as parties and affidavits were called for. Subsequent thereto, the operation of the judgment impugned in the appeal was stayed by an order dated 7th February, 2018. The said interim order continued till the dismissal of the appeal for default on 12th March, 2020.

Indisputably, the delay stands intervened by a period lost due to the pandemic. The appellants also cannot be made to suffer for the laches on the part of the learned advocates engaged for conducting the case. The delay, in our opinion, does not appear to be *mala fide*. It is also well settled that acceptance of explanation furnished should be a rule and refusal an explanation. The length of delay is also not a matter but acceptability of the explanation is the only criterion. The explanation given does not appear to be a mere excuse.

In view thereof, the delay in filing the restoration application is condoned and the order dated 12th March,

2020 is recalled. The appeal is restored to its original file and number.

The application for restoration being IA No. CAN 4 of 2021 is, accordingly, disposed of.

We have been informed that the appeal is ready for hearing and paper books have already been filed. In view thereof, list the matter for final hearing in the daily supplementary list of this Court on 8th April, 2025 as fixed at 2.00 p.m.

The contempt proceedings shall remain stayed till 28th April, 2025 or until further orders, whichever is earlier.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)