

8.
25.01.2021
S.D.

F.M.A. 2122 of 2018
With
CAN 1 of 2018 (Old No. CAN 1092 of 2018)
CAN 2 of 2020

Tapan Kumar Ghosh
Vs.
Sankar Roychowdhury
Mr. Sounak Bhattacharya
...For the Plaintiffs/Appellants.

In re: **CAN 2 of 2020**

This is an application for restoration upon recalling of the order dated 13.3.2020 passed by the Hon'ble Justice Bibek Chaudhuri in F.M.A. No. 2122 of 2018 on condoning the delay.

It is submitted that learned Advocate for the plaintiffs/appellants was engaged in another matter before a Division Bench of this Hon'ble Court as such he could not appear at the time of call and the matter was got dismissed for default. That due to some personal difficulty, plaintiffs/appellants could not attend the Hon'ble Court on 23.3.2020 to affirm the application as there was nation-wide lock-down announced in view of pandemic situation due to

Covid-19. Accordingly, the application for recalling of the order could not be filed in time.

Bearing in mind the explanation offered in the application for recalling, I am of the view that sufficient explanation has been offered for delay in preferring this appeal. I do find that there is only one default on the part of the plaintiffs/appellants and for the mistake on the part of learned Advocate who could not appear at the time of call, litigant should not suffer and accordingly, the application for recalling is considered and allowed for ends of justice.

Let the order dated 13.3.2020 be recalled and the case being F.M.A. 2122 of 2018 be restored to its original file and number.

Let the appeal appear for its final hearing two weeks hence under the same heading.

Thus, CAN 2 of 2020 is disposed of.

No order as to costs.

(Shivakant Prasad, J.)