

02.12.2022
Item No.8
Ct. No.7
CHC

S.A.48 of 2016
IA NO; CAN/1/2013 (Old No: CAN/11415/2013)
CAN/2/2018 (Old No: CAN/5294/2018)
CAN/3/2020 (Old No:CAN/821/2020)
CAN/4/2022

Sri Alope Kumar Dey
Vs.
Sri Bivabasu Dey & ors.

Syed Nurul Arefin,
Ms. Saswati Chatterjee
...for the appellant/petitioner

Mr. Tanmoy Mukherjee,
Mr. Manoranjan Jana,
Ms. Mitali Jana
...for the o.ps/respondents

Restoration application being CAN/4/2022 is
taken up for consideration.

Admittedly, the Second Appeal No.48 of 2016 got
dismissed on 25th January, 2021, due to non
appearance of the appellant.

It is submitted that the delay caused in filing this
restoration application has been sufficiently explained
in the relevant averments of the instant restoration
application.

The delay thus caused, according to
petitioner/appellant, is neither deliberate, nor
intentional.

Mr. Jana, learned advocate appearing for the
respondents raises objection disputing with the
explanation already offered. According to respondents

the decision rendered by the trial court being affirmed by the first lower appellate court, the execution already levied is getting delayed, because of the pendency of this restoration application. Respondents propose for rejection of this restoration application.

Having considered the submission of both sides, it appears that the explanation offered in the restoration application appears to be convincing, sufficient and as such the delay caused in filing the restoration application stands condoned.

The appeal be restored to its original file upon setting aside the order dated 25th January, 2021 subject to the condition that the petitioner/appellant shall pay a cost of Rs.5,000/- (Rupees Five Thousand only) to respondents within ten (10) days from the date of this order, failing which, this order shall automatically stands vacated.

Liberty to mention this matter for hearing of this appeal in the third week of January, 2023, providing the paper book is made ready in the meantime.

(Subhasis Dasgupta, J.)