

08.12.2021
Item no.28
Court No.6.
AB

**M.A.T. 96 of 2021
With
I A CAN 1 of 2021**

Barun Kumar Kuity & Anr.

Vs

The State of West Bengal & Others

Ms. Usha Maiti,
Mr. Sukanta Dasfor the Appellants.

Mr. S. M. Hassanfor the Haldia Municipality.

Sk. Afrojul Haquefor the Respondent
No.11.

By consent of the parties, the appeal and the application are taken up together for hearing.

This appeal is directed against an order dated November 11, 2019, whereby the application of the writ petitioners for condonation of delay in filing restoration application, the writ petition having been dismissed for default on August 10, 2009, was dismissed and, accordingly, the restoration application was also dismissed.

The learned Judge noted that there was a huge delay of 3438 days. The explanation that was given by the writ petitioners for such delay was not acceptable to the learned Judge. Relying on a decision of the Hon'ble Supreme Court, the learned Judge observed

that at least once a year a litigant must enquire from his lawyer what the status of the case is. In the present case, for almost ten years the writ petitioners did not make any enquiry and hence, did not come to know that the writ petition had been dismissed for default.

We cannot lose sight of the fact that the writ petitioners are lay village people. They may not be conversant with the legal procedure. They say that they did not feel it necessary to take steps since possession of land was not taken from them. Since they were not prejudicially affected as such, they rested in peace.

We do not find the explanation of the writ petitioners /appellants to be completely unacceptable. We are also of the view that cases should be disposed of on merits.

Taking a lenient view of the matter, we allow this appeal subject to the appellants paying costs assessed at Rs.1,000/- to be paid to the West Bengal Legal Services Authority within a week from date.

The order under appeal is set aside. WP No.11488 (W) of 2000 is restored to its original file and number.

Since we have not called for affidavits, the allegations in the stay petition are deemed not to be admitted by the respondents.

The appeal being MAT 96 of 2021 along with IA CAN 1 of 2021 are disposed of.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)