

S/L 5
23.02.2021
Court. No. 19
GB

C.O. 4152 of 2019

Asraf Ali Molla
Vs.
General Manager, Metro Railway, Kolkata

(Through Video Conference)

*Mr. Kamalesh Bhattacharya,
Mr. Aninda Bhattacharya.*

...for the Petitioner.

*Mr. Bikash Ranjan Bhattacharyya,
Mr. Debasish Chattopadhyay.*

...for the Opposite Party.

This revisional application has been filed by a claimant being aggrieved by an order dated November 13, 2019 passed by the Appellate Authority of Metro Railway, Kolkata in Acquisition Claim Appeal No.40 of 2019 arising out of Acquisition Claim Case No.JB/110/2014.

The petitioner is aggrieved because the learned Tribunal rejected an appeal on the ground of the same being barred by limitation. The learned Tribunal was of the view that the explanation for the delay in preferring the appeal after two years from the passing of the order impugned before it was neither satisfactory nor convincing.

The contention of the petitioner in the application for condonation of delay was that the petitioner was a part of the Tablighi Jamat and he had spent the entire intervening period between October 5, 2017 and July 18, 2019 travelling all over the country, spreading the teachings of Islam. The

learned Tribunal came to the conclusion that even if the petitioner was busy in spreading the name of Islam, being a part of the Tablighi Jamat and travelling all over the country, yet the petitioner could have taken out some time out of the 29 months and be diligent enough and file the appeal within atleast a reasonable time. On the basis of such observation, the learned Tribunal not being convinced that the petitioner was prevented by sufficient cause in preferring the appeal within the statutory period of limitation, rejected the application for condonation of delay as also the appeal.

The Metro Railway Construction and Works Act, 1978 empowers the learned Tribunal to condone the delay in preferring an appeal. The reasons assigned in the application under Section 5 of the Limitation Act by the petitioner is that a little less than two years was spent by the petitioner in travelling all over the country, spreading the word and preaching of Islam. This explanation is in my opinion sufficient reason for holding that the petitioner was not able to keep in touch with his learned advocate and instruct his learned advocate to prefer the requisite appeal.

It is settled law that every hours and every seconds delay need not be explained and a liberal approach rather than a pedantic approach should be taken by the courts in deciding applications for condonation of delay. As such, the contentions of Mr. Bhattacharya, learned senior advocate that in the absence of merits in the appeal, the learned Tribunal rightly rejected the application for condonation of

delay is not accepted. Whether there are merits in the appeal or not will be decided at the stage when the appeal itself will be taken up for hearing and not at the stage when the application for condonation of delay is being taken up, even prior to registration of the said appeal.

Under such circumstances, the revisional application is allowed. The order impugned is set aside. The delay in filing the appeal is condoned. The learned Tribunal is directed to register the appeal and hear out the appeal afresh on its own merits and on the basis of the oral and documentary evidence, which shall be available before it. The learned Tribunal shall dispose of the said appeal within a period of three months from date of communication of this order. This Court has not expressed any opinion on the merits of the appeal and the same shall be decided by the learned Tribunal in accordance with law.

The revisional application is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)