

January 18, 2022
Sl. No.45
Court No.1
SG/s.biswas

MAT 85 of 2020
With
CAN 1 of 2020 (Old No. CAN 1298 of 2020)
+
CAN 2 of 2020 (Old No. CAN 1305 of 2020)

Samarendra Datta
vs.
Nilesh Kumar Chapra
(Through Video Conference)

Mr. Arun Naskar,
Mr. K.D. Das,
Mr. Subrata Mukherjee,
Mr. Girish Chandra Gupta,
Ms. Sandhya Das Adhikari, Advocates

... for the appellant

Mr. Rabindranath Majumdar,
Mr. S.M. Obaidullah, Advocates

... for the respondent

There is a delay of 7 days in filing the appeal, therefore CAN 1 of 2020 (Old No. CAN 1298 of 2020) has been filed by the appellant seeking condonation of delay.

Submission of learned counsel for the appellant is that since the appellant is an aged person and suffering from various illness, he could not take steps within time which resulted in delay.

Having regard to the submission of learned counsel for the appellant and the plea which is taken in the application for condonation of delay, we are of the opinion that the appellant was prevented from filing the appeal within time on account of the bona fide reason and therefore a case for condoning the delay is made out.

Accordingly, CAN 1 of 2020 (Old No. CAN 1298 of 2020) is allowed and the delay in filing the appeal is condoned.

Heard the appeal by consent of the parties.

This appeal is directed against the order of learned single Judge dated 05.12.2019 whereby CPAN 529 of 2019 has been dismissed.

The submission of learned counsel for the appellant is that on 24.06.2019 learned counsel for the respondents had sought time before learned single Judge for passing the order whereas the order was already passed on 21.05.2019 and that before passing the order dated 21.05.2019 no opportunity of hearing has been given.

The submission of learned counsel for the respondents is that due opportunity was given and there was some discrepancies in this regard.

Having heard learned counsel for the parties and on perusal of the record, it is noticed that initially WPA 2762 (W) of 2019 was disposed of by order dated 06.02.2019 directing the respondent No.8 therein to consider the appellant's representation and decide the same by a reasoned order within 6 weeks from the date of communication of order of learned single Judge, after giving due opportunity of hearing to the appellant and to communicate the decision to the appellant within a week from the date of the decision. There was some delay in deciding the representation, therefore, the contempt petition was filed, but thereafter the decision was taken by the respondents by passing the order dated

21.05.2019 in accordance with the direction. Learned single Judge has duly considered the circumstances resulting in the delay in passing the order.

So far as the issue of opportunity of hearing is concerned, learned single Judge has recorded the satisfaction on the basis of the documents annexed with the petition, that an opportunity of hearing was given to the appellant. The documents referred by the appellant before this Court also disclosed that the appellant was given opportunity of hearing. That apart, learned single Judge has given a liberty to the appellant to challenge the order dated 21.05.2019 by way of appropriate proceedings before appropriate forum.

In the above circumstances, we do not find any error in the order of learned single Judge, hence no case for interference is made out.

The appeal is accordingly dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]