

21.06.2022
(D/L-11)
Ct.-18
(Susanta)

C.O. 290 of 2018

Sri Sukhendu Das
-Vs-

The West Bengal Housing Board & Ors.

Mr. Supratik Basu,
.... For the Petitioner.

Mr. Tapan Coomar Dey,
Ms. Shreya Chatterjee,
.... For the O.P. No.1.

The revisional application under Article 227 of the Constitution of India is directed against the order dated December 4, 2017 passed by the learned Chairperson, West Bengal Cooperative Tribunal in Misc. Case no. 1 of 2017 arising out of unregistered Appeal No. 02 of 2014.

The petitioner initiated a dispute case being dispute case no. 11/RCS of 2013 before the Deputy Registrar Cooperative Societies, West Bengal against the opposite parties.

The learned arbitrator appointed in the said dispute case passed an award in favour of the petitioner.

The opposite party no. 1 aggrieved by the said award preferred an appeal under Section 147 of the West Bengal Cooperative Societies Act 2006 before the Tribunal being unregistered appeal no. 02 of 2014.

The said appeal was filed out of time, as such, accompanied by an application for condonation of

delay, the said application for condonation of delay got dismissed for default on January 30, 2015.

The opposite party no.1 filed an application seeking recall and/or setting aside of the said order dated January 30, 2015.

The said application was also filed out of time, as such, it was also accompanied by an application for condonation of delay, the Tribunal by the order impugned has allowed the said application subject to payment of costs of Rs.1,000/- (rupees one thousand)only.

Mr. Supratik Basu, learned advocate for the petitioner submits that the delay was of almost two years and the explanation offered by the opposite party no.1 to justify the said delay is not at all satisfactory as such the said delay should not have been condoned by the tribunal.

He refers to the decision of the Hon'ble Supreme Court in the case of ***Estate Officer, Haryana Urban Development Authority -Vs- Gopal Chand Atreja*** reported in **AIR OnLine 2019 SC 270** to contend that without proper explanation, long delay should not be condoned.

Mr. Tapan Coomar Dey, learned advocate for the opposite party no.1 on the other hand submits that the application for condonation of delay in filing the said appeal got dismissed for default for the laches of the learned advocate engaged by his client and for which his client should not suffer and he refers to the decision of the Hon'ble Supreme Court ***in the case of***

Rafiq and another -Vs- Munshilal and another reported in **AIR 1981 SC 1400**.

Mr. Dey further refers to a Division Bench Judgment of this Court in the case of ***Dhrubendra Deb Roy -Vs- Kumarendra Deb Roy*** reported in **AIR 1959 (Cal) 19** to contend that the costs awarded by the order impugned since has been affected by the petitioner he has no right to challenge the said order. In reply, learned Counsel for the petitioner submits that his client although has accepted the cheque on account of the said costs but has not encashed.

Having heard the learned Counsel for the parties and on perusal of the records it appears that opposite party no.1 in its application for condonation of delay has alleged that due to the change of the venue of the Appellate Tribunal, the learned advocate for the appellant/opposite party no. 1 could not keep track with the said appeal as a result missed the date fixed for hearing of the said application for condonation of delay and failed to appear before the Tribunal on the said date and in consequence the said application was dismissed for default.

The decision of the Hon'ble Supreme Court reported in **AIR 1981 SC 1400 (supra)** lays down that for the laches of his learned advocate the client should not suffer.

The judgment of the Hon'ble Supreme Court cited the learned advocate for the petitioner reported in **AIR OnLine 2019 SC 270 (supra)** is

distinguishable in the facts of the present case inasmuch as in the said case the delay was not properly explained, the Hon'ble Supreme Court in view of the length of the delay opined that such length of delay should not be condoned in the absence of explanation.

The Tribunal in exercise of its discretion has accepted the explanation offered by the opposite party no. 1 and condoned the delay. Exercise of the said discretion does not appear to be capricious and/or arbitrary, therefore, the order impugned does not call for any interference.

C.O. 290 of 2018 fails with the above terms without any order as to costs.

The Tribunal is requested to decide the application for condonation of delay in preferring the unregistered appeal as expeditiously as possible.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)