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Ct. No. 04

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WP.CT. 38 of 2011
CAN 1 of 2020 (Old No. CAN 2785 of 2020)
CAN 2 of 2020 (Old No. CAN 2800 of 2020)

Union of India & Ors.
Vs.
Shri Mahendra Nath Patra & Ors.

Mr. Naba Kumar Das.
... for the petitioners.
Mr. Ujjal Roy,
Mr. Arpa Chakraborty.
... for the respondents.

Re: CAN 2 of 2020 (Old No. CAN 2800 of 2020)

This is an application for condonation of delay of 2020 days in filing an application for restoration of the writ petition, which was dismissed for default on August 22, 2014.

We are quite alive of the proposition of law that the length of delay is immaterial, but what is important is the sufficiency of cause shown by the applicant. The delay of longer period may be condoned if there are proper and sufficient explanations; whereas the delay of shorter period may not be condoned in absence thereof. The Court must be liberal in considering the sequence of events pleaded in the application and should not be hyper-technical in finding the fault in the applicant for the purpose of dismissal of an application for condonation of delay.

Keeping in mind the above proposition of law, let us consider whether there has been proper and sufficient explanations for such enormous delay.

It is stated in the application that the writ petition was called on August 22, 2014 and was

dismissed for default, as none appeared for the writ petitioners. There is complete silence between the period from August 22, 2014 and March 18, 2015 when the letter was written to the learned Advocate on record pertaining to the filing of affidavit-in-reply. It is further stated that the reminder was issued on July 23, 2015, but there is no response from the learned Advocate on record. The writ petitioners remained silent thereafter.

Paragraph 6 of the said application would reveal that a new panel of the Advocates representing the Railway was prepared and published on March 25, 2019 and Mr. Sanjay Ghosh, learned Advocate, was appointed on August 02, 2019. Even thereafter no explanation has been offered for immediate steps having not taken until January 14, 2020, when the Law Officer of the South Eastern Railway, Kharagpur obtained a case status from the official website of this Court of its own and the knowledge of dismissal order is imputed thereupon. A letter dated January 17, 2020 was caused upon Mr. Naba Kumar Das, learned Advocate, to act on behalf of the writ petitioners without showing any steps having taken with the erstwhile appointed learned Advocate after the change of panel. The paragraph further proceeds that after January 20, 2020 the advice came from Mr. Das, who is representing them now to take immediate steps for filing an application for restoration of the writ petition and the requisite documents/papers pertaining to the writ petition was handed over to Mr. Das in the last week of February, 2020.

Though the lapses and laches on the part of the learned Advocate may be one of grounds for

condonation of delay, as the litigant should not suffer, but the events narrated in the said application do not instil any confidence on us that not only the learned Advocate on record was responsible for such delay in filing an application, but the same was also attributable to the conduct of the writ petitioners as well.

The record would reveal that a direction was passed for filing affidavit-in-reply much prior to the date of dismissal, i.e. August 22, 2014 and it is inconceivable that the concerned officer thought it fit in the month of March and July, 2015 after such enormous lapse of time to file affidavit-in-reply in the matter. Even thereafter between the period from July 23, 2015 till August 02, 2019 there is no explanation offered regarding steps having not taken by the writ petitioners in the matter. Even after the Lawyer engaged from the new panel published on March 25, 2019 there is no correspondences shown with the newly appointed Advocate and it is improbable that the officer could gather the knowledge of the order of dismissal only on January 14, 2020, when he accessed the official website of this Court ascertaining the status of the case and came to know that the instant writ petition has been dismissed on August 22, 2014.

There is complete lapses and negligence on the part of the writ petitioners or its officials in conducting the case and the explanations sought to be offered are somewhat blurred and cannot come within the ambit of sufficient cause. There is neither a symmetry nor the facts narrated in seriatim can be synchronized as flow of events acceptable in normal course of transaction or dealing with the matter.

We thus do not find any justification in allowing the application for condonation of delay.

The application being CAN 2 of 2020 (Old No. CAN 2800 of 2020) is thus dismissed; in consequence, the application for restoration being CAN 1 of 2020 (Old No. CAN 2785 of 2020) is accordingly dismissed.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)