

**12.04.2023**  
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IA No.: CAN 3 of 2023 (Restoration)  
and  
IA No.: CAN 4 of 2023 (Sec.5)  
in  
**FMA 98 of 2022**  
+  
IA No.: CAN 2 of 2019 (Old No.: CAN 6740 of 2019)

**Dilip Kumar Das**  
– **Versus** –  
**Kolkata Metropolitan Development Authority**  
**& Others**

Mr. Swarup Paul,  
Mr. Guru Saday Dutta,  
Mr. Anish Roy  
... for the Applicant/Appellant.  
Mr. Satyajit Talukdar  
... for the KMDA.

Records reveal that the appeal, being FMA 98 of 2022 along with the application being CAN 2 of 2019 (Old No.: CAN 6740 of 2019) were dismissed for default on 16<sup>th</sup> June, 2022. For recalling the said order, the application, being IA No.: CAN 3 of 2023 has been filed along with an application for condonation of delay, being IA No.: CAN 4 of 2023.

Mr. Paul, learned advocate appearing for the applicant/appellant submits that there had been no intentional delay on the part of the applicant to prefer the restoration application. The learned advocate engaged by the applicant could not appear before the Court on 16<sup>th</sup> June, 2022. The dismissal of the appeal was also not immediately communicated to the applicant.

Mr. Talukdar, learned advocate enters appearance on behalf of the KMDA/respondents.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It appears that the delay which had occurred is neither *malafide* nor intentional and it cannot be said that the applicant adopted dilatory tactics.

We are satisfied with the explanation given towards the delay in filing the restoration application and towards the absence of the learned advocate for the applicant before the Court on 16<sup>th</sup> June, 2022, when the matter was dismissed for default.

Accordingly, the delay in filing the restoration application is condoned and the order dated 16<sup>th</sup> June, 2022 is recalled. The appeal and the application being CAN 2 of 2019 (Old No.: CAN 6740 of 2019) are restored to their respective original file and number.

The applications, being IA No.: CAN 3 of 2023 and IA No.: CAN 4 of 2023 are disposed of.

The respondents would be at liberty to file their affidavit-in-opposition to the stay application, being IA No.: CAN 2 of 2019 (Old No.: CAN 6740 of 2019) within three weeks. Reply thereto, if any, be filed within a week thereafter.

The parties would be at liberty to mention the matter for final hearing after expiry of the period as fixed above towards exchange of affidavits.

**(Partha Sarathi Chatterjee, J.)      (Tapabrata Chakraborty, J.)**