

AD 74.
Court No.1.
March 2, 2022
SG/s. biswas

MAT 284 of 2016
with
CAN 1 of 2016 (Old No.CAN 1839 of 2016)
CAN 2 of 2016 (Old No.CAN 9650 of 2016)

Shiba Prosad Banerjee
-versus-
The State of West Bengal and others

Mr. Saptangsu Basu, Sr. Advocate with
Mr. Swarup Paul,
Mr. Surya Maity,
Ms. Amrita Maji,
Ms. Mrinalini Majumder, Advocates
... for the appellant.

CAN 1839 of 2016 has been filed seeking condonation of delay in filing this appeal. Submission of learned counsel for the appellant is that there is a delay of 254 days.

Having perused the said application and after considering the submission of learned counsel for the appellant, we are of the opinion that the delay has properly been explained and sufficient reason exists for filing the appeal. Hence, CAN 1839 of 2016 is allowed and delay for filing the appeal is condoned.

By this appeal the writ petitioner has challenged the order of learned Single Judge dated 09.06.2015 whereby in the absence of learned counsel for the petitioner, learned Single Judge has dismissed WP 5345 (W) of 2007 with costs by placing reliance upon the statement of learned counsel for the State.

The appellant had approached the writ court with a plea that he was awarded the work for rendering 5 KVA generator services at Katwa Sub-Divisional Hospital, Burdwan on monthly hire charges and in pursuance to the same, the work of operating generators was done by the appellant but the payment was not made despite submitting bills for the same. In the petition a prayer was made to direct the respondents to make a payment of ₹2,34,263.40 as generator service charges including the extra point from August, 2002 to January, 2007. The appellant had challenged the order dated 18.05.2015 whereby his claim was rejected.

On 09.06.2015 when the matter came up before learned Single Judge, learned counsel for the appellant was not present and at that time learned counsel appearing for the State had made the statement that no generator was installed in the said premises at the relevant point of time and relying upon the statement, learned Single Judge has dismissed the petition with costs.

Submission of learned counsel for the appellant is that there was enough material already available on record indicating the generator was duly installed and that no affidavit was filed by the respondents stating that no such generator was installed, therefore merely on the basis of oral statement the writ court could not have dismissed.

Though in this appeal the respondents are served and affidavit of service has been filed but no one has appeared to dispute the contention raised by learned counsel for the appellant.

Considering the circumstances of the case, we are of the opinion that the appellant is entitled to an opportunity to bring to the notice of learned Single Judge the material place on record in support of the plea taken in the writ petition. The writ petition has been dismissed merely on the oral statement of learned counsel for the respondents without then being direction to the respondents to put the factual stand on record by way of affidavit, which has caused prejudice to the appellant.

Hence, the order dated 09.06.2015 passed by learned Single Judge is set aside and the matter is remanded back to the writ court for fresh decision in accordance with law. Since the petition is pending from 2007, learned Single Judge is expected to decide the matter expeditiously.

MAT 284 of 2016 and CAN 9650 of 2016 are accordingly disposed of.

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.)

