

07.06.2022
SL No.20
Court No.8
(gc)

MAT 547 of 2022

With

CAN 1 of 2022

With

CAN 2 of 2022

Mokshed Ali Sarkar

Vs.

State of West Bengal & Ors.

Mr. Dilip Kumar Samanta,
Mr. Sanat Kumar Roy,
Mr. Abhishek Banerjee,
...for the Appellant.
Mr. Jahar Lal De, Ld. A.G.P.,
Mr. Shamim ul Bari,
...for the State.

The appeal is accompanied by an application for condonation of delay. There is a delay of 1688 days in preferring the mandamus appeal. The explanation for the delay is stated in paragraph 18. The said paragraph is reproduced below:-

“18. The petitioner states that in preferring the said Mandamus Appeal in this Hon’ble Court, there is a delay of 1688 days and the petitioner could not prefer the Mandamus Appeal in time mainly on the ground that after the dismissal of the Writ Petition by this Hon’ble Court on 27.07.2017, the petitioner became highly affected mentally and as the only source of livelihood having been lost, the petitioner had confined himself in his house and could not be able to seek for legal advice after such dismissal of the said Writ Petition. On 17.03.2022, the petitioner visited the chamber of Mr. Sanat Kumar Roy, Learned Advocate and sought for legal advice in the matter. After holding consultation with the Learned Advocate and after being satisfied with the legal advice of Mr. Sanat

Kumar Roy, Learned Advocate, the petitioner had instructed him to take appropriate legal measure for challenging the impugned judgment and order of the Learned Trial Judge dated 27.07.2017 passed in W.P. No.15492(W) of 2017. Accordingly, the Memo of Appeal has been preferred with the application for Stay and Condonation of Delay on 11.04.2022. The delay so caused is wholly unintentional and beyond the control of the petitioner.”

In an application for condonation of delay, the Court is required to be satisfied that there has been no culpable negligence on the part of the applicant and sufficient cause exists for the Court to take a liberal view after taking into consideration all the relevant circumstances. The applicant is required to satisfy the Court that he had sufficient cause for not preferring the appeal or making the application within the period of limitation. The appellant/petitioner does not say that he was misled by any order or he was not aware of the consequences of the order. There is a vague statement that the petitioner became “highly affected mentally” as the only source of livelihood was lost. The appellant has failed to substantiate the kind of mental illness being suffered during the aforesaid period or to produce any medical report with regard to his mental incapacity for which he was unable to approach the Court within the period of limitation or at least within a reasonable period.

The learned Counsel for the petitioner has submitted that having regard to the perversity of the findings of the learned Trial Judge, the Court may take a liberal view and

should not hold that the application suffers from any culpable negligence or want of bona fide.

We have gone through the impugned order in detail. There was an allegation of anomalies and discrepancies in maintaining the stock register, shortage of food-grains to the tune of 3 quintals 31 kgs. 750 gms. of rice, 16 quintals 68 kgs. 100 gms of wheat and 1 quintal 25 kgs. of sugar and non-supply of cash-memo to the ration-card holders. The appellant admitted the discrepancies in maintaining the stock registers in his reply to the show cause and he gave reasons of illness for the said discrepancies. However, as rightly observed by the learned Single Judge that no cogent explanation was given by the appellant in his reply to the show cause for huge shortage of food-grains detected during inspection on February 26, 2013. Contrary to the allegations made by the writ petitioner, there is nothing on record to indicate that any register or Books of Accounts were seized by the Inspector of Food and Supplies on February 26, 2013. The non-supply of weighment chart prepared at the time of inspection on February 26, 2013 was not even urged by the appellant in the show cause notice submitted on March 18, 2013, nor there was any material on record to indicate that the appellant was willing to review the shortage of huge quantity of food-grains in the stock of the petitioner. These are some of the factors which weighed with the learned Single Judge to buttress the argument made on behalf of the appellant/writ petitioner that non-supply of important documents has completely

prejudiced his right to make an effective representation. Curiously mental illness which forms the basis of the appellant's failure to explain huge shortage of food-grains has been taken refuge in trying to explain the delay in filing the instant appeal. Even on the merits as we are invited to consider, we do not find any reason to interfere with the impugned order.

Accordingly, the application for condonation of delay being CAN 1 of 2022 stands dismissed.

In view of the dismissal of the application for condonation of delay, the appeal being MAT 547 of 2022 and the application being CAN 2 of 2022 also stand dismissed.

However, there shall be no order as to costs.

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

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)