

59 **26.09.
2022**
Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WPLRT 85 of 2022

Ayub Ali Molla and another
Vs.
The State of West Bengal and others.

Mr. Goutam Das,
Mr. Gazi Faruque Hossain.
... for the petitioners.

Mr. Chandi Charan De,
Mr. Anirban Sarkar.
... for the State.

The instant writ petition is against an order dated 1st March 2022 passed by the West Bengal Land Reforms and Tenancy Tribunal whereby and whereunder the applications being MA 1198 and 1199 of 2018 were dismissed.

The Tribunal was approached challenging an order of the competent authority under the specified Act and the interlocutory orders were passed from time to time. Subsequently, the said tribunal application was dismissed for default on 28th August 2018 as none appears in support of the said application. Immediately, the aforesaid applications were filed for restoration of the tribunal application and condonation of delay in taking out the said application for restoration.

The Tribunal proceeded to dismiss the said applications, as the conduct of the petitioners does not show that they were diligent and careful in proceeding with the said matter.

We have an occasion to peruse the averments made in the aforesaid applications wherefrom it appears that the erstwhile Advocate, who was engaged by the petitioners, was entrusted to look after the affairs of the

proceedings and to take prompt steps therein. Subsequently, it was found that the said Advocate was not communicating with the petitioners and later on another Advocate was engaged to look after the said matter. After finding that the matter, which was supposed to be listed on a particular date, did not appear, an enquiry was made by the petitioners and it was found that the said application was dismissed for default on 28th August 2018. Immediately the aforesaid applications were taken out.

It is no doubt true that the Court shall not allow the application for condonation of delay or an application for restoration merely on the *ipsi dixit* of filing the same. What is important is the sufficiency of the cause, which largely depends upon facts of the each case. The approach of the Court should not be pedantic nor to find a fault in the cause shown for non-appearance but to see that there is a reasonable nexus in the events narrated in the said application, which comes within the peripheral of sufficient cause.

The length of delay is immaterial. The Court/Tribunal shall ensure the disposal of the matter on merit rather to dismiss on the anvil of the technicalities. The finding of the Tribunal is based on the conduct of the petitioners as they were indulged in seeking several adjournments, which appears to us to have taken a front seat while dismissing the aforesaid applications. The Tribunal should consider the restoration application on the basis of the explanation offered therein for the day on which the tribunal application was dismissed for default and should not be swayed by the past conduct. Since the entire approach of the Tribunal does not appear to be in consonance with the findings made herein above, we are of the view that the impugned order cannot be sustained.

Accordingly, the impugned order is set aside.

The application for condonation of delay as well as

the application for restoration of the tribunal application is allowed. The original application being OA 3126 of 2012 is restored to its original file and number.

The Tribunal is requested to fix a date for hearing of the said original application and an attempt shall be made to dispose of the same as expeditiously as possible.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)