

D/L
Item No 7
05.12.2022
KOLE

**MAT 1041 of 2022
With
IA No. CAN 1 of 2022
With
IA No. CAN 2 of 2022**

**The State of West Bengal & Ors.
-Vs.-
Satyabrata Giri & Ors.**

*Mr. Chaitali Bhattacharyya,
Mr. Mrinal Kanti Ghosh,*

...for the appellants.

Mr. Binoy Kr. Das,

...for the respondent No. 1.

In Re: CAN 1 of 2022 in MAT 1014 of 2022

This is an application for condonation of delay of 348 days in filing the appeal.

Although the delay is substantial, considering the facts and circumstances of the case and the explanation furnished, we condone the delay.

CAN No. 1 of 2022 is accordingly disposed of.

In Re: MAT 1014 of 2022 with CAN 2 of 2022

By consent of the parties the appeal and the applications are taken up for hearing together.

Affidavits in reply filed on behalf of the appellants in connection with the application for condonation of delay as also in connection with the stay application, be kept with the records.

This appeal is directed against a judgment and order dated July 9, 2019, whereby WP No. 21101 (W) of 2017 was allowed by the learned Single Judge. It appears that there

was some defect in the affirmation of the affidavit in opposition that was presented on behalf of the State. On that ground, the learned Judge took such opposition off the record. Having done so, the learned Judge passed the impugned order on the principle of non-traverse observing that there was no affidavit in opposition in the eye of law. Being aggrieved, the State has come up in appeal.

We are told that the State has also made an application before the learned Single Judge for recalling of the order which has been challenged in this appeal. Such application is being heard. Affidavits have been exchanged in such application.

In view of the aforesaid, we are not inclined to entertain this appeal. The appellants cannot proceed parallelly before two fora. The appellants will be at liberty to pursue the recalling application before the learned Single Judge. Needless to say if the appellants do not succeed in the recalling application, they would still have the chance to challenge such order as also the parent order by way of appeal, subject to the question of limitation.

The appeal and the connected applications are disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)