

67      **26.09.  
2022**  
Ct. No. 04

Ab

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side.**  
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**WPLRT 93 of 2022**

**M/s. Octagon Piazza Pvt. Ltd.**  
**Vs.**  
**The Kolkata Thika Tenancy Controller and others.**  
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**Mr. Saptansu Basu,**  
**Mr. Sudip Das.**  
**... for the petitioner.**

**Mr. Md. T. M. Siddiqui,**  
**Mr. Supratim Dhar.**  
**... for the State.**

**Mr. Arun Pahari,**  
**Mr. Biswanath Samanta.**  
**... for the respondent no. 3 to 8.**

The instant writ petition is directed against an order dated 19<sup>th</sup> May 2022 passed by the West Bengal Land Reforms and Tenancy Tribunal by which the application for condonation of delay in MA 293 of 2021 is rejected.

There is no doubt that the delay is enormous. Even the Tribunal has opined that the length of delay is immaterial as the Tribunal/Court is supposed to look into the sufficiency of cause, which occasioned the delay. It has been averred that the proceeding before the Thika Controller was concluded and reserved for judgment way back in the year 2014 and the order came to be passed in the year 2019.

Since such a long time was taken by the said authority in delivering the judgment/order, the applicant could not keep the track and, in fact, was not communicated with the said order that has already been passed. Subsequently, after coming to know of the aforesaid order having been passed, an approach was

made to the Tribunal immediately and it has found that there has been a delay of more than 500 days.

The Tribunal proceeded to dismiss the said application taking into account the representation filed by the petitioner before the Thika Controller, Kolkata. The Tribunal is of the view that the defence was taken in the written statement through the Director of the petitioner, who was aware of all the proceedings and, therefore, there is no genuinity into the averments made in the application for condonation of delay. The Tribunal was very much relying upon the representation filed by the petitioner on 28<sup>th</sup> September 2020 before the Thika Controller, as the statement pertaining to the knowledge of the impugned order.

The aforesaid portion has been quoted in the impugned order and upon meticulous reading of the same, we do not find that it has got any nexus to acquiring the knowledge of the impugned order passed after a gap of nearly five years. What is material is the knowledge of the impugned order and the proceeding to be filed before the Tribunal beyond the statutory period.

Neither the judgment impugned in the instant writ petition nor it would appear from the said representation that there is any knowledge having imputed about the impugned order and, therefore, mere filing a representation before the Thika Controller would not be sufficient enough to deter the statutory remedy provided under the Act. The flip side of the case can also be seen that though the matter was reserved for judgment in the year 2014, there does not appear to us that any attempt was made by the petitioner in this regard. It is only in 2020 the representation was made and the Tribunal proceeding came to be filed deriving the knowledge of the said order beyond the statutory period.

We are not unmindful of the proposition that the Court must encourage the litigation to be decided on

merit than to be dismissed on the ground of limitation. Even if there are minor lapses on the part of the petitioner but sequel the events narrated therein are found to be reasonable, the balance of rights can be achieved by imposing costs.

As indicated above, the order challenged before the Tribunal came to be passed after a gap of five years from the date of closure of the hearing, the tribunal application needs to be decided on merit.

Accordingly, the order impugned is set aside subject to the payment of costs assessed at Rs.50,000/- to be paid to the Advocate-on-Record of the respondent no.3 to 8 within one week after reopening of this Court following Puja Vacation. The Advocate-on-Record shall ensure that the said amount is disbursed to the respective clients equally upon obtaining proper receipt thereof.

In the event the costs is not paid within the time indicated herein above, this order shall stand automatically recalled and the writ petition shall be deemed to have been dismissed.

On the other hand, if the costs is paid within the time indicated herein above, the Tribunal is requested to proceed with the hearing of the tribunal application upon giving an opportunity of hearing to all interested persons and ensure the disposal thereof within six months from the date of communication of this order.

With these observations, the writ petition is disposed of.

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

**(Harish Tandon, J.)**

**(Prasenjit Biswas, J.)**

