

**13.01.
2023**

Ct. No. 04

Ab

WP.ST 212 of 2016

With

IA No. CAN 1 of 2019 (Old No. CAN 8657 of 2019)

IA No. CAN 2 of 2019 (Old No. CAN 8658 of 2019)

IA No. CAN 3 of 2022

IA No. CAN 4 of 2022

State of West Bengal and others

Vs.

Dr. Tirtha Pati Nath and others.

Mr. Swapan Kumar Paul.

... for the petitioners.

Mr. Krishnendu Bera,

Ms. Debolina Chakraborty.

... for the respondents.

Re: CAN 3 of 2022 & CAN 4 of 2022

This is an application for condonation of delay in filing an application for restoration of the application, which was dismissed for default on 13th June 2022.

According to the petitioners, there is a delay of 172 days in taking out an application for restoration. It appears that the matter was called on 13th June 2022 at 4.20 p.m. and the moment the Advocate-on-Record of the petitioners reached the Court, the matter listed at serial no. 137 was being taken up. However, he immediately mentioned the matter and orally prayed for recall of the said order in absence of the other side. It is further stated that a notice was served on the learned Advocate of the other side on 14th June 2022 and since the Commercial Court matters were fixed on the said date, the regular sitting was done at 3.00 p.m. Immediately the matter was mentioned and the Bench directed the Advocate-on-Record of the petitioners to mention the matter on the next date.

Interestingly, the learned Advocate did not mention

the matter on the next day as he found that the order of dismissal of the application for restoration was already passed on 13th June 2022 and, therefore, there is a requirement to file an application for restoration and/or recall of the said order.

The factum of dismissal of the aforesaid application was duly communicated to the Dealing Assistant of the department in second week of July 2022 and an instruction was received to obtain the certified copy of the order. The server copy of the aforesaid order was duly communicated and sent along with all other papers including the previous applications for taking necessary steps.

Though it is mentioned in the said application that the learned Advocate was otherwise indisposed till the last week of August 2022, but there is a complete silence till the 31st September 2022 when the Court was closed for long Puja Vacation. The further averment, which would be evident from the said application, would manifest that there are some lapses and laches on the part of the concerned authority in taking steps for filing the application for restoration, which cannot be attributed to the conduct of the appearing Advocate-on-Record.

There is a lack of symmetry in the consequences of events, which can be manifestly seen from the averments made therein yet we feel that the Court should not be too rigid in dealing with such applications if the imposition of costs would sufficiently compensate to the other side.

We are not unmindful of the fact that the moveability in the Government department to the pace, which is expected, is conspicuously absent. The reason may be various but the experience gained by us in passage of time inculcates a sense that because of non-fixation of the responsibility on the concerned officer,

such lapses and laches are apparent.

Invariably, the plea of administrative procedural hassles are taken as a shelter for such delay but we feel that the time has come when the functioning of the Government requires introspection and revisitation, more particularly, when the public exchequer is involved.

Since the Court should encourage the litigation to be decided on merit, but if we find some laches on the part of the authority, the dismissal of the application for condonation of delay and restoration would be too harsh and, therefore, we propose to allow the aforesaid applications, which we, in fact, did, subject to the payment of costs assessed at Rs. 50,000/- to be deposited with the State Legal Services Authority within three weeks from date.

The moment the said amount is deposited within the time indicated above, the same shall be kept in an account earmarked for juvenile.

In default, this order shall stand automatically recalled and the applications being CAN 3 of 2022 and CAN 4 of 2022 shall be deemed to have been rejected.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

