

S/L 17
10.05.2023
Court. No. 12
Swayan

**CAN 1 of 2022
With
CAN 2 of 2022
With
CAN 3 of 2022
In
CO 782 of 2006**

**Manohari Roy
Vs.
Smt. Susama Rani Dutta**

Mr. Tarak Nath Halder

...for the petitioner.

*Mr. Sourav Sen
Mr. Diptomoy Talukder
Ms. Chanchala Chatterjee
Mr. Adrisnata Chakraborty*

...for the opposite party.

1. Both the petitioner and the opposite party are represented by their respective learned Advocates.
2. As per request made at the Bar that the interim applications being CAN 1 of 2022, CAN 2 of 2022 and CAN 3 of 2022 are taken up for hearing.
3. By filing CAN 1 of 2022 the petitioner has prayed for restoration of the instant revisional application to its original file by recalling the order of dismissal as recorded on 15.04.2016.
4. By filing CAN 2 of 2022 the petitioner has prayed for condonation of delay of 2280 days in preferring the application for restoration being CAN 1 of 2022.
5. By filing CAN 3 of 2022 the petitioner has prayed for substitution of the legal heirs of the sole opposite party particulars of whom have been given in paragraph 4 of CAN 3 of 2022.

6. As against the aforesaid three interim applications being CAN 1 of 2022, CAN 2 of 2022 and CAN 3 of 2022, Mr. Sen, learned Advocate for the opposite party files his two affidavit-in-opposition, namely, affidavit-in-opposition against the application for restoration and affidavit-in-opposition challenging the condonation of delay. Let both the affidavit-in-opposition as filed on behalf of the opposite party be taken on record.

7. In support of the aforementioned three interim applications, Mr. Halder, learned Advocate for the petitioner at the very outset draws attention of this Court to paragraph 6 onwards of CAN 1 of 2022. It is contended by Mr. Halder that since the learned Advocate for the present petitioner has missed the list when the instant case was listed for hearing, the instant matter was dismissed for default on 15.04.2016. Drawing further attention to page 4 of CAN 1 of 2022 it submitted further by Mr. Halder, learned Advocate for the petitioner that subsequently on 14.07.2022 the petitioner received a copy of an application as filed by the legal heirs of the opposite party of the present case which has been filed before the West Bengal Land Reforms and Tenancy Tribunal.

8. It is further submitted by Mr. Halder that after receipt of such notice the petitioner of the instant Misc. Case became suspicious and when he contacted his lawyer, his said lawyer made all possible inquiry and came to learn about the dismissal of the instant revisional application on 15.04.2016 and for the aforesaid reason 2280 day delay have been occurred in filing application

for restoration being CAN 1 of 2022. Mr. Halder further submits before this Court that the delay as occurred in filing CAN 1 of 2022 may be condoned considering the fact that such delay is unintentional on the part of the present petitioner and the same occurred due to inaction/non-action of the learned Advocate for the petitioner. Mr. Halder, thus, submits before this Court that the present petitioner may not be victimized for the laches of his learned Advocate if there be any. Mr. Halder also submits before this Court that in view of the circumstances as stated above all the aforementioned three interim applications being CAN 1 of 2022, CAN 2 of 2022 and CAN 3 of 2022 may be allowed so as to enable to the present petitioner to proceed with the instant petition on its merit.

9. *Per contra*, Mr. Sen, learned Advocate for the opposite party in course of his submission draws attention of this Court to the affidavit-in-opposition as filed today as against the application for restoration. Drawing attention to page 11 of the said affidavit-in-opposition it has been contended by Mr. Sen, learned Advocate for the legal heirs of the opposite party that after dismissal of the instant revisional application by an order dated 17.01.2022, the present opposite parties being the legal heirs of the original opposite party got delivery of possession of the suit property by the bailiff of the Court and that after obtaining such delivery of possession in execution proceeding the suit property has been mutated in the names of the legal heirs of the present opposite

parties. Drawing attention to Annexure – B at page No. 12 of the aforementioned affidavit-in-opposition it is contended by Mr. Sen that after dismissal of the instant revisional application on default the present petitioner has executed a deed of gift in respect of the suit property in favour of his brother, Dayal Roy and the said factum of transfer has been intentionally suppressed while preferring the aforementioned three interim applications. It is further contended by Mr. Sen that from the conduct of the present petitioner it would reveal that his action in connection with the instant revisional application is a clear abuse of the process of the law which may not encouraged and condoned. It is further submitted by Mr. Sen by suppressing material facts before this Court the petitioner has disentitled himself from getting the relieves as prayed for in the aforesaid three interim applications.

10. This Court has perused the entire materials as placed before this Court, this Court has also given its anxious consideration over the submission of the learned Advocates for the contending parties.

11. After giving due consideration over the matter as placed before this Court, this Court has every reason to believe that the present petitioner is not at all successful in explaining the delay of 2280 days in filing the application for restoration being interim application CAN 1 of 2022. As rightly pointed out by the learned Advocate for the opposite party that in order to show his *bona fide* the petitioner ought to have come with clean hand and ought to have stated before this Court that in the

meantime that is after the dismissal of the instant revisional application on 15.04.2016 a transfer took place in respect of the suit property by the petitioner in favour of his brother, Dayal Roy. It is equally pertinent to mention herein that as of now no application for recording of devolution of interest has also been filed especially when by transferring his interest in respect of the suit property the present petitioner ceased to have interest over the suit property as well as in respect of the instant three interim applications.

12. Considering the every pros and cons of the matter as discussed hereinabove this Court considers that it is not a fit case for allowing the aforementioned three interim applications being CAN 1 of 2022, CAN 2 of 2022 and CAN 3 of 2022 and accordingly all the aforementioned three interim applications being CAN 1 of 2022, CAN 2 of 2022 and CAN 3 of 2022 are hereby dismissed.

(Partha Sarathi Sen, J.)