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WPLRT 37 of 2023

Court : 04
Item : 08
Matter : WPLRT
Status : DO
Bench ID : 266048
Transcriber: NANDY

Maya Sarkar
Vs.
The State of West Bengal & Ors.

Mr. Gopal Chandra Ghosh, Advocate
Mr. Sibasis Ghosh, Advocate
Mr. Dearika Nath Mukherjee, Advocate
Mr. Pradip Kumar Ghosh, Advocate

.....for the Petitioner

Mr. Supratim Dhar, Advocate

.....for the State

Mr. Puspendu Chakraborty, Advocate

.....for the Private Respondent

Mr. Biswajit Mukherjee, Advocate

Mr. Piyali Sengupta, Advocate

.....for the Kolkata Municipal Corporation

Let the affidavits of service filed in Court today, be kept with the record.

It discerned in course of hearing that pending an application under Section 5 of the Limitation Act for condonation of delay in filing the tribunal application, the parties were directed to exchange affidavits in the main matter. By the impugned order the Court proceeded to hear out the application for condonation of delay and dismissed the same. As a resultant effect, there is no finding recorded in the tribunal application. The Tribunal proceeded to reject the said application that the statements made in the course of the hearing are not reliable and does not instill judicial conscience that the writ-petitioner was prevented by sufficient cause.

The aforesaid observation appears to have been made for the simple reason that supplementary affidavit came to be filed in the course of hearing giving further explanations in relation to a period which according to the writ-petitioner was not sufficiently explained. Since the

supplementary affidavits were filed, it gives an impression in the minds of the Members of the Tribunal that those facts have been subsequently introduced and to be treated as afterthoughts.

Learned Advocate appearing for the other respondents submits that the matter was, in fact, intended to be heard finally as they disclosed their stand on merit by filing affidavit yet there is no decision taken by the Tribunal in this regard.

Let us consider whether the observations of the Tribunal in relation to an application for condonation of delay, can be sustained.

Admittedly the Thika Controller conclusively heard the matter on 12.04.2019 but did not indicate the date for passing the judgment. The judgment/order came to be passed on 04.09.2019 which according to the petitioner was not within the knowledge. Furthermore, it is indicated that the learned Advocate did not attend the office of the Thika Controller due to his illness relatable to the old-age and finally when he went to the office of the Thika Controller on 28.11.2019, he came to know of the order being passed and an application for certified copy was filed. The certified copy was made available on 09.01.2020. However, in the meantime, further notice was received by the writ-petitioner on 17.12.2019 from the office of the Thika Controller that the next date is fixed on 09.01.2020. However, instruction was given to take steps to challenge the said order but the learned Counsel was unable to do so till the first week of March 2020 because of his illness and reporting of high number of cases due to COVID-19. Ultimately there was a lockdown declared in

the country and after the relaxation, the tribunal application was filed.

It is no doubt true that during the lockdown there was a complete disruption to the access which was gradually relaxed and the functioning of the Tribunal or Court were also very limited. Apart from the same, the Court must encourage the litigation to be decided on merit instead of dismissing the same on the anvil of limitation. The adjudication on merit would ultimately render the litigation to attain finality and will also inculcate a sense in the litigant that justice has been imparted. The Court should not swayed simplicitor on the fact that the supplementary affidavit came to be filed disclosing the events which led such delay as a ground for refusal to condone the delay. The Court shall be guided by sufficiency of the cause and should not adopt a pedantic and/or technical approach in defeating the meritorious case.

It is apposite to observe that the moment the Tribunal decided that the parties should exchange their affidavits in the main matter; it should not be too technical on the application for condonation of delay and should have decided the matter on merit.

We feel that the impugned order warrants interference. The same is hereby set aside. As a consequence whereof the application for condonation of delay is allowed subject to deposit of costs assessed at Rs.3,400/- with the State Legal Services Authority within a week from date.

The State Legal Services Authority shall keep such amount in an account earmarked for juvenile, if deposited.

Since the parties have exchanged affidavits in the main matter, we presume that the same is otherwise ready for disposal and the Tribunal is directed to dispose of the same within two months from the date of communication of this order after affording an opportunity of hearing to the parties.

With these observations, the writ-petition being **WPLRT 37 of 2023** is **disposed of**.

Liberty is granted to the petitioner to pray for any interim relief, if warrants so, and the Tribunal shall decide the same keeping in mind the time limit indicated hereinabove, on its merit.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)