

12.07.2023
Ct. No. 13
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M.A.T. 1053 of 2023

Suraj Mondal
Vs.
The State of West Bengal & Os.

Md. Sabir Ahmed,
Md. Abdur Rakib,
Mr. Biswajit Sarkar

... for the appellant

Mr. Suddhadev Adak,
Ms. Arpita Mondal

...for the State

Mr. Debabrata Saha Roy,
Mr. Subhankar Das,
Mr. Neil Basu,
Mr. Sankha Biswas

...for the private respondent

1. The appeal is directed against an order dated April 20, 2023 passed by the learned Single Judge of this Court in CAN 1 of 2023 and CAN 2 of 2023.
2. The writ petition was dismissed for default on April 17, 2019. After a delay of nearly 4 years, an application for recall of the order dated April 17, 2019 was made.
3. By the impugned order, the learned Single Judge was not satisfied with the explanation regarding the delay of nearly 4 years in filing CAN 2 of 2023. Recall of the order dated April 17, 2019 has been declined. The reasoning and findings of the learned Single Judge on the absence of sufficient

explanation for delay, is sound and sustainable and should not ordinarily be interfered with.

4. The learned Single Judge has, however, made observations in the merit of the case and found that the actual allottee of the MR Dealership i.e. the mother of the private respondent/first wife, was not made party to the writ petition.
5. Having heard the learned counsel for the parties, this Court is of the view that while there has been an inordinate delay of 4 years in filing an application for recall of the order dated April 17, 2019, the appellant may for the ends of justice be given an opportunity to present her case in the main writ petition one last time.
6. This Court therefore directs that the order dated April 17, 2019, dismissing the writ petition being WPA 19001 of 2018, be recalled. The writ petition is restored to its original file and number. The actual allottee/first wife of the deceased, Samsun Neher Bibi, shall be added as a party respondent to the writ petition. The advocate on record for the appellant /writ petitioner shall carry out the amendment of the cause title of the writ petition.
7. The aforesaid order shall take effect upon payment of costs assessed at Rs. 5,000/- payable by the petitioner to Bharat Sevashram Sangh.

8. Mr. Saha Roy, learned counsel appearing for the private respondent has, in his usual fairness, declined any costs being paid to his client.
9. It is made absolutely clear that this Court has not, in any way, entered into the merits of the rival claims between the appellant and the respondent in the main writ petition. The learned Single Judge shall proceed to deal with the matter independently and uninfluenced by any observations either made by this Court or in the impugned order dated April 20, 2023.
10. With the aforesaid observations, M.A.T. 1053 of 2023 shall stand disposed of.
11. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)