

D/L. 58 & 59.
February 13, 2023.
MNS.

RVW 167 of 2022
+
CAN 1 of 2022
+
CAN 2 of 2022
in
C. O. No. 2473 of 2018

M/s Meharia Consultants Private Limited
Vs.
Sri Prabir Kumar Seal

Mr. Probal Mukherjee,
Mr. Tanmay Mukherjee,
Mr. Souvik,
Ms. Paromita Moitra,
Mr. K. R. Ahmed

... for the review applicant.

Mr. Gopal Chandra Ghosh,
Mr. Supratim Dhar,
Mrs. Jayeta K. Mitra

...for the opposite party.

Re: CAN 2 of 2022(condonation application)

CAN 2 of 2022 is taken up for hearing first
since it is an application for condonation of delay
in filing the review petition, bearing RVW 167 of
2022.

The premise of the said application for
condonation is that the petitioner was properly
advised by counsel only after the opposite party's
application under Section 7(3) of the West Bengal
Premises Tenancy Act, 1997 (hereinafter referred

to as 'the 1997 Act') was allowed, thereby striking out the review applicant's defence.

In a nutshell, the petitioner had applied in the court below for producing challans with regard to alleged payment of rent by the tenant/petitioner in the trial court.

By an order dated November 26, 2018, this Court had dismissed the revisional application challenging an order rejecting such application of the petitioner.

Being aggrieved thereby, the petitioner had preferred a Special Leave Petition (SLP), which was dismissed at the SLP stage by the Supreme Court vide order dated March 8, 2019.

The learned Senior Advocate appearing for the review applicant submits that thereafter the Covid-19 period intervened and the petitioner, only after its application under Section 7(3) of the 1997 Act being allowed on April 6, 2022 was advised to prefer the present review petition.

It is submitted that the review applicant has an extremely strong case to argue otherwise, inasmuch as there was an error apparent on the face of the record since the challans were already on record at the juncture when it was found by

this court that the petitioner had failed to produce the challans.

Learned counsel appearing for the opposite party vehemently opposes the prayer for condonation of delay.

Perused the application for condonation of delay, the affidavit-in-opposition and the reply filed against the same. It transpires from the pleadings in the condonation of delay application itself that the petitioner has not explained the inordinate delay in preferring the present review petition from after the dismissal of the SLP on March 8, 2019 till after the application under Section 7(3) of the 1997 Act, was allowed.

From March 8, 2019, when the SLP was dismissed, till the commencement of the Covid-19 period, about a year had elapsed, during which the petitioner sat tight regarding the matter.

Even thereafter, the petitioner waited till the application under Section 7(3) of the 1997 Act was allowed against the petitioner on April 6, 2022 to prefer the review petition.

Even if the petitioner otherwise had a good case in the review petition, the merit of which cannot be gone into at this stage unless the condonation application is allowed since the

same is still *non est* in the eye of law, the inordinate delay occasioned by the petitioner in awaiting the result of the application under Section 7(3) of the 1997 Act, having taken a chance before the trial court therein, precludes the petitioner from claiming any equity inasmuch as condonation of the long delay of more than a thousand days is concerned.

Since it transpires from the orders of the trial court as well, certified copies of which is a part of record, that the petitioner was consistently habitual in occasioning delay inasmuch as bringing to the notice of the court the allegation of the challans being on record is concerned, this Court is not inclined to grant the benefit of equitable consideration in favour of the petitioner by condoning the long delay in preferring the review petition.

As such, in view of the reasons as cited above, there is no scope of entertaining the application for condonation of delay. Hence, CAN 2 of 2022 is dismissed on contest.

Consequently, the review petition, bearing RVW 167 of 2022, and the connected stay application, being CAN 1 of 2022, being *non*

est in the eye of law, are also deemed to stand dismissed.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)