

19.12.2023

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WPST 185 of 2023

Shri Shambhunath Naskar

– Versus –

The State of West Bengal & Others

Mr. Golam Mustafa,
Mr. Tarasankar Samanta
... for the Petitioner.

Mr. Tapan Mukherjee,
Ms. Ashmita Mukherjee
... for the State.

The present writ petition has been preferred challenging an order dated 26th September, 2023 passed in the original application, being OA 154 of 2023. In the said order the learned Tribunal observed that “..... *considering the matter closely, the reason for delay as stated by the applicant is neither satisfactory nor are valid reasons, hence, this application is disposed of on the ground of limitation.*”

Mr. Mustafa, learned advocate appearing for the petitioner submits that as the order of the learned Tribunal passed in the earlier original application, being OA 139 of 2012 on 18th October, 2012 was not complied with, the petitioner preferred a contempt application, being CCP-63 of 2013 which was disposed of by an order dated 22nd July, 2013. Aggrieved by the said order, the petitioner preferred a writ petition before this Court being WPST 342 of 2013 in which an order was passed on 5th September, 2013 directing the respondent no.2 herein to consider the matter in terms of the order dated 22nd July, 2013 passed

by the learned Tribunal in the contempt application. Thereafter, the respondent no.2 passed an order on 20th September, 2013. In the midst thereof, alleging violation of the order dated 5th September, 2013 the petitioner filed a contempt application, being CPAN 2111 of 2013 wherein an affidavit was filed by the alleged contemnor in the month of March, 2017 placing on record the order dated 20th September, 2013. Upon perusal of the same, a co-ordinate Bench of this Court disposed of the contempt application on 16th September, 2022 observing that it would be open to the petitioner to take appropriate steps against the said decision dated 20th September, 2013. Pursuant to the said order dated 16th September, 2022 passed in CPAN 2111 of 2013 [WPCRC 156(W) of 2016], the petitioner filed the original application [OA 154 of 2023] before the learned Tribunal challenging the order dated 20th September, 2013 passed by the respondent no.2 after lodging an objection dated 20th November, 2022 to the order dated 20th September, 2013. As the same was not responded to, the petitioner preferred the original application, being OA 154 of 2023. Such factual sequence though urged was glossed over by the learned Tribunal and the application was stated to be barred by limitation.

Per contra, Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents submits that the order impugned in the original application [O.A. 154 of 2023] was passed on 20th September, 2013 and the same was received by the

petitioner on 30th September, 2013 but thereafter no steps were taken for a long period of time to challenge the said order before the learned Tribunal. In view of such inordinate delay, the learned Tribunal rightly observed that the application is barred by limitation.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Records would reveal that the contempt application filed before this Court, being CPAN 2111 of 2013 [WPCRC 156(W) of 2016] was first taken up for hearing on 27th June, 2014 when the petitioner was directed to serve copy of the application upon the alleged contemnor. As none appeared on behalf of the alleged contemnor in spite of service, the Court issued a Rule of contempt on 22nd April, 2016 and thereafter, when the matter came up for hearing on 16th September, 2022, an affidavit of compliance was filed on behalf of the alleged contemnor placing on record the order dated 20th September, 2013 passed by the respondent no.2. After disposal of the contempt application, the petitioner through his learned advocate submitted an objection dated 20th November, 2022 to the order dated 20th September, 2013. As the same was not responded to, the petitioner preferred the original application, being OA 154 of 2023.

It, thus, appears that this Court was in *seisin* of the entire matter during the period from the year 2013 till the year 2022. In the order dated 16th September, 2022 it was observed that it would be open to the petitioner to take

appropriate steps against the order dated 20th September, 2013 passed by the respondent no.2.

In the said conspectus, we are of the opinion that the delay which had occurred is neither *mala fide* nor deliberate and it also cannot be stated that the petitioner adopted dilatory tactics. The length of delay is not a matter but acceptability of the explanation is the only criterion.

In view thereof, we set aside the order dated 26th September, 2023 passed by the learned Tribunal in the original application, being OA 154 of 2023 and direct the learned Tribunal to hear the said original application on merits and to dispose of the same, as expeditiously as possible, without granting any unnecessary adjournment, to either of the parties.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(V. M. Velumani, J.)

(Tapabrata Chakraborty, J.)