

29.03.2023
Item No.03
Court No.32
Avijit Mitra

RVW 56 of 2017
with
CAN 1 of 2018 (Old No. CAN 8002 of 2018)
Superintendent of Police, Murshidabad & ors.
- Versus -
Sri Balai Chakraborty

Mr. Swapan Kumar Pal
...for the appellants/applicants
Mr. Bikash Ranjan Neogi,
Ms. Ananya Neogi,
Mr. Guddu Singh
...for the respondent

Aggrieved by the order dated 3rd October, 2016 passed in the appeal being MAT No.3984 of 1997, the State of West Bengal and its functionaries have preferred the present review application being RVW 56 of 2017.

As we have invited Mr. Pal, learned advocate appearing for the appellants/applicants to advance his arguments on merits of the review application, we allow the restoration application and recall the order dated 5th September, 2018. The review application is restored to its original file and number.

The application being CAN 8002 of 2018 is, accordingly, disposed of.

Records reveal that a writ petition was preferred by the writ petitioner/respondent being C.O. No.13254 (W) of 1993. The same was allowed by an order dated 3rd September, 1997. Challenging the said order, an appeal

was preferred by the applicants herein being MAT No.3984 of 1997. The said appeal was dismissed for default by an order passed by a Coordinate Bench of this Court on 14th February, 2002. The applicants thereafter filed a restoration application being CAN 8244 of 2003 on 16th September, 2003. As the said application was time-barred, an application under Section 5 of the Limitation Act being CAN 434 of 2013 was also filed by the appellants about ten years thereafter on 15th January, 2013. The application for condonation of delay was dismissed and consequently the application for restoration was also dismissed by an order dated 3rd October, 2016. The said order is the subject matter of challenge in the present review application.

Mr. Pal, learned advocate appearing for the applicants argues that the impugned order had been passed without considering the explanation given towards the delay in preferring the restoration application. The limitation starts from the date of knowledge of the order. The applicants came to learn about the order dated 14th February, 2002 in the month of August, 2003 and as such there had been a delay of only about 46 days in preferring the restoration application but in the order impugned the Court had erroneously proceeded on the basis that there was a delay of 578 days.

He further argues that for the laches on the part of the learned advocate engaged on behalf of the applicants, the applicants cannot suffer more so when the writ

petitioner suppressed his actual date of birth and produced false documents. The applicants' claim is meritorious and the delay which had occasioned is neither *mala fide* nor intentional.

Ms. Neogi, learned advocate appearing for the writ petitioner/respondent denies and disputes the contention of the applicants and submits that there is no patent error apparent on the face of the records and the parameters prescribed for review do not postulate a rehearing of the dispute because a party has not highlighted all the aspects of the case or could perhaps argued them more forcefully.

She submits that the Court has refused to exercise discretion in favour of the applicants since there had been unexplained delay of about 578 days in preferring the restoration application coupled with the fact that Section 5 application was filed about ten years after filing the restoration application.

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

The order dated 8th October, 2016 was passed on contest. No argument was advanced on behalf of the applicants that the delay in filing the restoration application ought to have been computed as 46 days. The matters which ought to have been urged in course of hearing of the appeal cannot be agitated afresh. In view thereof, the argument of Mr. Pal that the appeal needs to be re-heard upon review is not acceptable to this Court.

The review proceedings are not by way of an appeal. The power of review may be exercised when some mistakes or error apparent on the face of the record is found. The grounds taken in the review application do not in any manner establish any error whatsoever on the face of the records nor the application for review has been filed upon discovery of new and important piece of evidence.

In view thereof, no interference is called for in the review application and the same being RVW 56 of 2017 is, accordingly, dismissed.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)