07-08-2023
Court No.2
Sh/09.

In The High Court At Calcutta
Jalpaiguri Circuit Bench

W.P.A. 1504 of 2023

Jayshree Bhardwah
-Vs-
Dy Commissioner of Revenue W.B.State Tax & Ors.

Mr. Boudhayan Bhattacharyya,
Mr. Sougata Banerjee,
Mr. Stuti Bansal,
Ms. Bodhistya Ghosh.
..For the Petitioner.
Mr. Ratan Banik,
Mr. Bishwaraj Agarwal.
.. For the Respondent nos. 5 & 7.
Mr. Subir Kumar Saha, AGP,
Mr. Bikramaditya Ghosh.
.. For the State.

Affidavit of service filed in Court today be taken on record.

Heard learned counsels for the parties.

The petitioner who is the proprietor of a business under the name and style of M/s. Annapurna Caterer entrusted Chartered Accountant (CA) named Sandip Kumar Jha with the accounts, income tax, GST, GST registration etc. with regard to her business and continued to hand over cash and make payments in connection with tax and other financial expenses through bank transfer in favour of the accountant. In the month of September, 2022 the petitioner went to the United Bank of India, Sevok Road Branch and was informed that her current account with the said bank was blocked against recovery of her liability towards payment of GST. The petitioner found that the registered address, phone number and e-mail ID given to the authority were that of the C.A. and not the petitioner. Several attempts made by the petitioner to contact the accountant thereafter were in vain and the petitioner learnt that the C.A. had cheated many of his clients including the petitioner and was absconding.

Upon meeting the concerned authority at the GST department the petitioner came to know that there was a demand in the year 2018-2019 against her firm which was not deposited by the C.A.

By an order passed on 17th January, 2022, the petitioner was directed to make payment of tax along with interest and penalty thereon to the tune of Rs.7,46,386.14 by 17th of February, 2022. The petitioner was unfortunately not aware of the said order. Upon having knowledge of the same, the petitioner preferred an appeal accompanied by an application under Section 5 of the Limitation Act, 1963 for condonation of delay in preferring the appeal.

By a notice issued on 7th June, 2023 the Joint Commissioner State Tax (Appeal), Siliguri Circle, Siliguri directed the petitioner to appear before the authority on 13th June, 2023 to show cause as to why the appeal shall not be rejected on the ground of delay in filing the same. The petitioner submitted her reply to the show cause on 26th June, 2023 following which the appeal was dismissed solely on the ground of limitation, by an order passed on 27th June, 2023. The said order is assailed in the writ petition.

Learned counsel for the petitioner submits that in view of what has been stated above, the petitioner may be granted an opportunity of hearing before the appellate authority and the appeal be considered on merits.

Placing reliance on an authority in Rafiq & Anr. V. Munshilal & Anr. reported in AIR 81 S.C. 1400, learned counsel for the petitioner submits that the petitioner should not be made to suffer due to laches on the part of her C.A.

In the authority referred by the learned counsel for the petitioner, the Hon'ble Supreme Court has observed in no uncertain terms that a person who selects his advocate, briefs him, pays the fees demanded by him and then trusts him to do the rest of the things cannot be made to suffer for not acting as a watch dog of the advocate. It shall be useful to set out the relevant portion of the judgment hereunder:

" *The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he* *has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watch dog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. May be we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into dis-repute. What is the fault of the party who having done everything in his power an expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court"*

Learned counsel for the respondents submits that the petitioner who is the proprietor of a business should have been more diligent in dealing with the financial aspects of the business and it is not believable that the petitioner relied upon a C.A. entirely without caring to keep a vigil on the activities of the accountant.

In the case in hand, the petitioner contends that she has suffered due to faith and trust reposed upon the C.A.by her and the C.A. taking undue advantage of the same.

In view of the observation made by the Hon'ble Apex Court in the authority referred to above, this Court is inclined to hold that the petitioner is entitled to a hearing by the authority on merits before her appeal is disposed of and any liability slapped upon her.

The order impugned dated 27th June, 2023 dismissing the appeal on the ground of limitation is therefore, set aside.

The concerned authority, being the 3rd respondent herein, is directed to reconsider the appeal preferred by the petitioner on merits upon affording reasonable opportunity of hearing to all the interested persons including the petitioner and pass a reasoned order within one month from the date of communication of this order, in accordance with law.

The decision taken by the authority shall be communicated to the petitioner within a week thereof.

With the above observation and direction the writ petition being WPA 1504 of 2023 is disposed of.

There shall be no order as to costs.

Since no affidavit has been called for, allegations contained in the writ petition shall be deemed not to have been admitted.

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

(Suvra Ghosh, J.)