



C.M.P.Nos.21442 of 2022 etc. in W.A.Nos.81, 82 of 2010

C.M.P.Nos.21442, 21444, 21435, 21440 of 2022
in W.A.Nos.81, 82 of 2010

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D.KRISHNAKUMAR, J.
and
P.B.BALAJI, J.

(Order of the Court was made by D.Krishnakumar, J.)

The petitioner has filed the instant civil miscellaneous petitions to condone the delay of 1592 days and to restore the above writ appeals, which were dismissed for non prosecution by this Court vide order dated 14.06.2018.

2. In the affidavit filed in support of the prayer, the petitioner has stated that he filed the Writ Petition No.19008 of 1998 seeking a direction to the respondents 1 & 2 therein to enforce the award dated 26.02.98 passed by the Ombudsman in his favour. Challenging the very same award, the respondent Bank also filed Writ Petition No.6483 of 2001. The writ Court, by a common order dated 30.10.2009, dismissed the writ petition filed by the petitioner and allowed the writ petition filed by the respondent Bank by setting aside the award passed by the Ombudsman, on the ground that proper and necessary parties were not impleaded in the proceedings and a



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criminal complaint was pending. When the aforesaid writ appeals were filed aggrieved by the said order, the same were dismissed for non prosecution.

According to the petitioner, he came to know about the order of dismissal of the writ appeals for non prosecution only when he visited the High Court after the national lockdown announced due to corona pandemic and also heard from one of the junior Advocates that the counsel on record for the petitioner had passed away on 11.04.2016. Thereafter, he has engaged the present counsel for filing the aforesaid applications before this Court and in that process, the delay of 1592 days has occurred, which is neither wilful nor wanton, but only due to bona fide reasons. Hence, he seeks for condoning the delay and to take up the writ appeals on file for arriving at a decision on merits.

3. We find that the reasons stated by the petitioner in the affidavit for condoning the inordinate delay of 1592 days in filing the applications to restore the aforesaid appeals are not acceptable, as it is a well settled legal position that the delay has to be satisfactorily explained, as held by the Hon'ble Supreme Court in ***H.Dohil Constructions Company Private Limited v. Nahar Exports Limited and another, (2015) 1 SCC 680.***

Moreover, the writ Court has rightly come to the conclusion that the



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disputed question of fact cannot be adjudicated by the Ombudsman without impleading the proper and necessary parties to the proceedings and it is always open to the parties to workout their rights before the competent forum, which shall be independently decided based on oral and documentary evidence to be placed by the parties, uninfluenced by the observations of the Court. When such liberty was already granted to the petitioner, we are not inclined to entertain the instant civil miscellaneous petitions seeking to condone the inordinate and unexplained delay of 1592 days and to restore the above writ appeals. Therefore, all the civil miscellaneous petitions are dismissed.

(D.K.K.,J.) (P.B.B.,J.)
07.08.2023

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