

10.09.2024

Serial no. 3

CT.-35

[G.S.D]

CRMSPL 30 of 2024

With
CRAN 1 of 2024

In the matter of : MMTC Limited

... .. petitioner

Mr. Sabyasachi Banerjee

Mr. Swarajit Dey

Mr. Piyush Kr. Ray

Ms. Syed Kishwar

Mr. Vipul Vedant

... for the petitioner

Mr. Mrityunjoy Chatterjee

Mr. Manas Das

... for the O.P.

Learned advocate appearing for the applicant has prayed for condoning the delay which has occasioned in preferring the present application seeking leave in preferring the appeal.

There has been a delay of 1975 days in preferring the instant appeal. The records of the case reflect that the present applicant approached the learned Sessions Court in appeal against the order passed by the learned Metropolitan Magistrate, 11th Court, Calcutta in connection with Case No. C/571 of 1998.

The Judgment and Order of the learned Sessions Judge reflects that the appeal was preferred in the year 2020 and the same was dismissed on 31st of May, 2023 (Criminal Appeal No. 52 of 2020) passed by the learned

Additional District and Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, Calcutta. The learned Appellate Court affirmed the reasons so assigned by the trial court for dismissing the complaint under Section 256(1) of the cr.p.c. and acquitting the appellant on the ground that there was a direction for expeditious trial.

Mr. Banerjee, learned advocate, appearing on behalf of the applicant, submits that the learned Sessions Judge ought not to have exercised its jurisdiction in view of the provision of Section 374 of the cr.p.c. but, erroneously, the learned Sessions Court having exercised its jurisdiction, the same has resulted in irreparable loss and injury to the applicant.

Learned advocate draws the attention of the court to the manner in which the proceedings progressed before the learned Metropolitan Magistrate, 11th Court, Calcutta, which was initiated in the year 1998 and was dismissed in the year 2018, i.e., after 20 years.

In view of the long pendency of the complaint case, which is under the provisions of Section 138 of the N.I. Act, this Court directed the parties to submit a list of dates on the basis of the compilation of orders, so submitted earlier. Accordingly, Mr. Banerjee, learned advocate, has submitted a list of dates today. Let the same be kept with the record.

Mr. Chatterjee, learned advocate, appearing on behalf of the o.p. no.2, submits that no plausible explanation has been offered by the complainant/applicant in the present application under Section 5 of the Limitation Act on the basis of which delay can be condoned.

Learned advocate submits that the applicant has presently challenged the order passed by the learned Metropolitan Magistrate, 11th Court, Calcutta and prays for condoning the delay of 1975 days.

It is submitted on behalf of the o.p. no.2 that, having regard to the period of delay which is more than six years, this court should not condone the delay, as the complainant in various forum was not diligent in pursuing the case which was initiated at their instance.

To that effect, learned advocate for the o.p. no.2, has relied upon ***Pathapati Subba Reddy (Died) by L.Rs. & Ors.-vs- The Special Deputy Collector (LA)*** in Special Leave Petition (Civil) No. 31248 of 2018. The attention of the Court is drawn to paragraph 26 of the said judgment and, more particularly, to sub-paragraphs (i), (ii) & (vii), which are quoted below:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;
(vii) Merits of the case are not required to be considered in condoning the delay;"

Learned advocate has also relied upon a judgment of the Hon'ble Supreme Court reported in **[(2012) 2 SCC (Cri) 580 Postmaster General & Others -vs- Living Media India Limited & Anr.]** and stressed that as because the applicant is a Government Department or a Statutory Authority the same should not give any premium in favour of them in cases of condoning the delay.

I have considered the submissions advanced on behalf of both the parties, particularly, the reasons assigned by each of them as also the manner in which the proceedings progressed before the learned Metropolitan Magistrate, 11th Court, Calcutta and I find that the complaint case was filed in the year 1998, then, an application was filed at the instance of the accused for Stay of the proceedings before the Hon'ble High Court, which is reflected from the order dated 13.09.2000, thereafter, the accused was represented under Section 317 of the cr.p.c. for a considerable period of time and the complainant was absent by a petition.

What is glaring on the list of dates, as borrowed from the certified copy, is the period from 05.07.2005 to 19.09.2012 i.e., for seven years and two months the warrant of arrest was pending for execution return against the accused. Thus, by approaching the higher forum and by evading the process of law, the accused was successful in frustrating the litigation which was initiated in the year 1998.

Having regard to the same and the fact that the examination-in-chief was completed and cross-examination was done in part on behalf of the complainant, I think that the complainant should have been more diligent. Nevertheless, the sole responsibility of delaying the present proceedings cannot be foisted on the complainant itself. Secondly, during the period of 1975 days, it is not that the complainant did not pursue the remedies. The complainant pursued the remedies but was wrongly advised and, as such, approached the learned Sessions Court in an appeal. Such appeal was dismissed on 31st of May, 2023.

Having considered the fact that the balance of convenience, in this case, tilts in favour of a litigant, who was diligent before a Court of law and in this case the complainant has left no stone unturned but has suffered because of strategic delay caused at the instance of the accused/o.p. and for legal advice of their own lawyer, I am

of the view that the prayer for condonation of delay of 1975 days, so advanced before this court, should be allowed.

Accordingly, **CRAN 1 of 2024** is **Allowed**.

Delay is condoned.

In view of the delay being condoned, the appellant is granted leave to prefer Memorandum of Appeal within the statutory period against the impugned order.

Accordingly, **CRMSPL 30 of 2024** is also **Allowed**.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

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

(Tirthankar Ghosh, J.)