

11 15.05.2024

Ct-08

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MAT 659 of 2024

with

IA No. CAN 1 of 2024

CAN 2 of 2024

The State of West Bengal & Ors.

Vs.

Uday Mukherjee & Ors.

Mr. Biswabrata Basu Mallick, Ld. AGP

Ms. Parna Roy Choudhury

... For the Appellants

Mr. Haradhan Mondal

... For the Respondents

Re: CAN 1 of 2024(Section 5)

1. There is a delay of 77 days in presenting the memorandum of appeal.
2. We are satisfied with the explanations offered in the said application for not being able to file the memorandum of appeal within the statutory period, we are inclined to condone the delay in presenting the memorandum of appeal.
3. The application for condonation of delay is thus allowed without any order as to costs.
4. CAN 1 of 2024 is thus disposed of.

Re: MAT 659 of 2024

1. We have heard the learned counsel appearing for the parties.
2. It appears that the appellants have been lackadaisical in conducting the matter before the learned Single Judge. The gravity of the order and its impact ought to have been realized before an

urgency is shown with for early hearing of the appeal.

3. It appears that the appellants have been given enough opportunity to disclose their stand in the affidavit or in the report. In absence of any affidavit or report, the learned Single Judge has proceeded on the basis of the statement made in the writ petition. The oral objection of the State cannot supplement the requirement to file a written objection or disclosing their stand in writing. It appears to be a fashion for the State to shift the burden to Legal Remembrancer, Government of West Bengal, for the delay in preferring the appeal. The appellants resurrected after the matter was adjourned thrice by the learned Single Judge and now the alleged contemnors are required to be present personally to receive the sentence, they wake up from slumber. We do not find any reason for not approaching the learned Single Judge with an application for recalling or modification of the order upon disclosure of all relevant materials.

4. In view of the fact that in this application for stay certain facts have been disclosed along with the documents appearing at page 50 onwards, we permit the appellants to make an application before the learned Single Judge for reconsideration of the said decision in the light of the documents

disclosed in the appeal, subject to payment of cost of Rs.5,000/- by each of the alleged contemnors to each of the writ petitioners from their own resource and not from the Government exchequer within a period of one week from date.

5. There shall be an unconditional stay of operation of the impugned order for a period of one week from date. In the event the said cost is paid within the aforesaid period, the appellants shall be entitled to apply for recalling or modification or variation of the order passed by the learned Single Judge within a week thereafter.

6. In the event the appellants fulfill all the above conditions, the learned Single Judge is requested to reconsider the matter in the light of the materials to be produced before the learned Single Judge.

7. We make it clear that we have not gone into the merits of the case. We allow the appeal only to give an opportunity to the appellants to disclose their stand before the learned Single Judge with fresh materials, subject to fulfillment of the conditions imposed by this order.

8. In the event the conditions are not fulfilled the impugned order shall automatically revive.

9. In view of the above, the appeal being MAT 659 of 2024 stands disposed of along with CAN 2 of

2024.

10. However, there shall be no order as to costs.

11. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Uday Kumar, J.)