

AD-14
Ct No.09
30.04.2024
TN

WPA No. 10064 of 2024

Joydeep Roy
Vs.
The Institute of Chartered Accountants of India
and another

Mr. Joydeep Roy

.... petitioner in person

Mr. Rajib Ray

.... for the ICAI

- 1.** The petitioner, with the leave of court, appears in person.
- 2.** It is argued that the petitioner, being aggrieved by a decision of the Institute of Chartered Accountants taken against the petitioner, preferred an appeal before the Appellate Authority with an application for condonation of delay in filing the same. However, since the Appellate Authority is not functioning right now, the present challenge has been preferred invoking the writ jurisdiction of this court. The petitioner submits that there are several lines of judgments which say that if a Tribunal is not functioning, the writ court can assume the jurisdiction of the said Tribunal and decide the issue on merits.
- 3.** It is an admitted position that the Appellate Tribunal is not functioning now.

4. Learned counsel for the respondents points out that the petitioner seeks to re-agitate issues which were finally decided by this court on a previous occasion.
5. As such, even if the appeal was to be filed by the petitioner before the regular appellate forum, the same could not have been entertained on the ground of *res judicata*.
6. Upon a perusal of the annexures to the writ petition, this court is of the opinion that the petitioner is justified in arguing that due to the non-availability of the regular appellate forum, the writ jurisdiction definitely ought to be invoked, taking up the challenge of the petitioner by assuming the jurisdiction of the Appellate Authority.
7. Hence, the writ petition is entertained.
8. I find from the explanations given in the writ petition as well as the annexures thereto that sufficient grounds have been made out by the petitioner to condone the delay in preferring the appeal. As such, the said delay is hereby condoned.
9. However, the respondents are justified in arguing that in view of the same issues sought to be agitated in the appeal having already been decided finally in a parallel challenge before the writ court against the self-same impugned order, the petitioner cannot re-agitate such issues either in an appeal or a further writ petition.
10. Upon a careful perusal of the order dated February 06, 2024 passed in WPA No. 20724 of 2023, annexed at

page-279 of the writ petition, this court is of the opinion that at the said juncture, the writ court had elaborately been called upon to consider all the components of challenge, on the merits of the order impugned therein as well as here, and had arrived at conclusions upon consideration of the arguments of the parties and all the material facets of the challenge, ultimately turning down the said challenge.

- 11.** Since the petitioner now seeks to challenge the self-same impugned order passed against the petitioner by way of an appeal, alternatively a writ petition, the challenge is squarely barred by the principle of *res judicata* and the petitioner cannot re-agitate the same issues all over again. It is well-settled that the doctrine of *res judicata* is premised on the principle that one cannot be vexed twice on the self-same cause of action.
- 12.** In view of the elaborate judgment on merits passed in WPA No. 20724 of 2023 on February 06, 2024, judicial prudence demands that the same issues cannot be permitted to be agitated afresh, either in a properly constituted appeal or in a writ petition.
- 13.** Hence, WPA No. 10064 of 2024 is dismissed without any order as to costs on the grounds specified above.
- 14.** However, it is made clear that since the premise of the above dismissal is the principle of *res judicata*, nothing in this order shall prevent the petitioner, if the petitioner is otherwise entitled in law, to prefer an appeal against the order dated February 06, 2024

passed by this court in WPA No. 20724 of 2023. If such an appeal is preferred, the petitioner shall not be prejudiced on merits therein by any of the observations or the present dismissal.

- 15.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)