

07.05.2024
Item No.21
Court No.11
Avijit Mitra

WPLRT 60 of 2024

Aloke Kumar Das & ors.
- Versus -
State of West Bengal & ors.

Mr. Sadhan Kumar Haldar
...for the petitioner
Mr. T.M. Siddique,
Mr. Supratim Dhar
....for the State

Affidavit-of-service filed by the petitioners be kept on record.

Records reveal that the original application being O.A. No. 3046 of 2022 was preferred by the original applicants/writ petitioners challenging an order dated 28th June, 2022 passed by the respondent no.3 along with an application, being M.A. 1327 of 2022 for condonation of delay of 11 days towards preferring the said original application. The learned Tribunal refused to condone the said delay and dismissed the miscellaneous application and accordingly and as a natural corollary, the original application also stood dismissed. Aggrieved by the said order, the petitioners have filed the present writ petition.

Mr. Haldar, learned advocate appearing for the petitioners submits that the order impugned in the original application was passed on 28th June, 2022 and the learned advocate of the petitioners applied for certified copy of the said order on 31st August, 2022 and the certified copy was

received on 1st September, 2022. Thereafter, the original application was filed on 9th September, 2022. There was, thus, an unintentional delay of about 11 days.

He submits that for the laches on the part of the learned advocate, the petitioners cannot be made to suffer. There was no intentional delay on the part of the petitioners. Such argument, as advanced, was glossed over by the learned Tribunal. Such infirmity warrants interference of this Court. Reliance has been placed upon a judgment delivered in the case of *Rafiq & anr. Vs. Munshilal & anr.*, reported in *AIR 1981 SC 1400*.

Mr. Dhar, learned advocate enters appearance on behalf of the State respondents and opposes the petitioners' prayer.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

From the sequence of facts, it appears that the delay occurred, as appropriate steps were not taken by the petitioners' learned advocate. Such delay is neither *mala fide* nor intentional and it cannot be said that the petitioners adopted dilatory tactics.

It is well settled that the expression '*sufficient cause*' within the meaning of Section 5 of the Limitation Act should receive a liberal construction when no negligence or inaction or want of *bona fide* is imputable to the party. Acceptance of explanation furnished should be the rule and

refusal an exception. The length of delay is not a matter but acceptability of the explanation is the only criterion.

Applying such proposition of law to the facts of the case, we are of the opinion that the order passed by the learned Tribunal is not sustainable in law.

Accordingly, the order impugned in the present writ petition is set aside and the learned Tribunal is directed to dispose of the original application on merits, as expeditiously as possible, without granting any unnecessary adjournment to either of the parties.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)