

19.04.2024
Item No. 8.
Court No.6.
AB

**M.A.T. 1563 of 2023
With
CAN 1 of 2024**

**Gangadhar Sakha & Ors.
Vs
The State of West Bengal & Others**

Mr. P. C. Das,
Ms. Tithi Paulfor the Appellants.

Md. T. M. Siddiqui,
Mr. S. Adak,
Mr. Amrit Lal Chatterjee....for the State.

Affidavit of service filed in Court today, be kept
with the records.

In spite of service, excepting the State, no other
parties are represented.

A judgment and order dated July 14, 2023,
whereby the appellants' application for restoration of
their writ petition being WPA 13005 of 2005, which
had been dismissed for default on January 29, 2015,
was dismissed by a learned Single Judge of this Court,
is under challenge in this appeal.

It appears that the writ petition was filed on July
4, 2005. Direction for exchange of affidavits was given
by a learned Single Judge on July 26, 2005. An
interim order of status quo was also passed.

The writ petition appears to have been dismissed
for default on May 6, 2010. Subsequently, it was

restored. Again, it was dismissed for default on January 29, 2015.

The writ petitioners filed CAN 3 of 2023 and CAN 4 of 2023, being the restoration petition and an application for condonation of delay in filing the restoration application. The learned Single Judge, by the judgment and order impugned in this appeal, dismissed the application for condonation of delay. Consequently, the application for restoration of the writ petition was also dismissed. Hence this appeal at the instance of the writ petitioners.

We have heard learned Counsel for the appearing parties. While it is true that a litigant should be alert and diligent in pursuing litigation that he has instituted, it is not always unreasonable for a litigant to rely on his learned Advocate for the purpose of conduct of the litigation. This is frequently the case where the litigant is not so educated. Normally, it cannot be presumed that a litigant is negligent. One, who approaches the Court with a grievance and for redressal of his grievance, would ordinarily not act in a manner which would adversely affect his cause.

In the present case, the learned Judge came to the conclusion that the writ petitioners have failed to prove due diligence in approaching the Court with the restoration application. Accordingly, the application for condonation of delay was dismissed resulting in dismissal of the restoration application.

We are inclined to take a lenient view of the matter and restore the writ petition after condonation of delay, but on terms. We are of the view that it is desirable that all litigations are decided on merits.

Accordingly, we set aside the order under appeal. The application for condonation of delay in filing the restoration application is allowed. The restoration application also stands allowed. This will be subject to the appellants paying costs assessed at Rs.10,000/- to be paid to High Court Legal Services Authority within three weeks from date. In default of such payment, this order shall automatically stand recalled.

The appellants will be at liberty to mention the writ petition for hearing before the learned Judge having determination in the matter.

Let a copy of this order be forwarded to the Member Secretary, High Court Legal Services Authority, by the Registry of our Court. In the event the cost is not paid in terms of this order, the Member Secretary should draw our attention to such failure on the part of the appellants whereupon appropriate orders may be passed.

The appeal and the connected application are disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)