

21.04.2025
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Ct.No.7
sdas

WPA 22577 of 2017
with
CAN 1 of 2025
with
CAN 2 of 2025

Indira Nagar Colony Committee & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Subhas Chandra Atha
Ms. Payel Paramanik
...for the petitioner

Mr. Sk. Md. Galib
Ms. Sujata Mukherjee
... for the State

In Re : CAN 1 of 2025

This application has preferred seeking condonation of delay in preferring the application for restoration.

Mr. Atha, learned advocate for the applicant, submits that previously, another learned advocate had been entrusted with the responsibility of representing the petitioner before this Court. However, in July 2024, when the matter was called on for hearing, neither party was represented, and accordingly, the writ petition was dismissed for default. He submits that the said development was not immediately brought to the notice of the petitioner. Upon becoming aware of the order of dismissal, the petitioner engaged the present

advocate, and this application for restoration was filed on 10th February, 2025. Owing to the aforesaid circumstances and the time taken in preparing the application for restoration, there has been a delay of 190 days. He further submits that the delay was neither deliberate nor due to any intentional laches or negligence on the part of the petitioner, and therefore, the delay may be condoned in the interest of justice.

Mr. Galib, learned advocate representing the State, seriously opposes the prayer made on behalf of the petitioner. Referring to paragraph 10 of the application for condonation of delay, he submits that the entire blame has been placed upon the learned advocate who was initially engaged by the petitioner. He contends that the petitioner cannot seek to justify his own negligence merely by attributing fault to his previous counsel. In support of his submission, he places reliance on an unreported judgment of the Hon'ble Supreme Court passed in S.L.P. (Civil) Nos. 935–936 of 2021 (*Rajneesh Kumar & Anr. vs. Ved Prakash*).

Heard the learned advocates representing the respective parties.

It is noteworthy that the law of limitation is founded on public policy, its origin traceable to the maxim “*interest reipublicae ut sit finis litium*”—meaning, it is in the interest of the State that there

should be an end to litigation. Public interest mandates that there must be finality to legal proceedings. Section 3 of the Limitation Act explicitly bars the Court from entertaining any suit, appeal, or application filed beyond the prescribed period of limitation.

However, Section 5 of the Limitation Act confers discretion upon the Court to entertain a time-barred action, provided that the delay in approaching the Court is sufficiently explained. The legislature has employed the expression "sufficient cause," which signifies that the explanation offered by the applicant must be both reasonable and acceptable. There is a catena of judgments holding that a litigant must remain vigilant and cannot justify negligence solely by placing blame on the advocate engaged. At the same time, there is also consistent judicial opinion that there can be no straightjacket formula for determining 'sufficient cause.' Each case must be assessed based on its own facts and circumstances. While deciding an application for condonation of delay, the Court must also consider whether, on account of a mere technicality, a genuine cause should be shut out at the threshold of the Court.

It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not

put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. (See, the case of N. Balakrishnan vs. M. Krishnamurthy, reported in (1998) 7 SCC 123).

Although, in the present case, there was an attempt to place the entire blame on the learned advocate who previously represented the petitioner, it is noted that the petitioner does not appear to have had any intention to derive personal gain and/or advantage by causing the delay in filing the application for restoration. While there can be no doubt as to the binding nature of the precedent laid down in Rajneesh Kumar & Ors. (*supra*), the said decision is distinguishable on facts.

In view of the above and considering the overall circumstances, I am inclined to accept the explanation offered by the petitioner. Accordingly, the application for condonation of delay is allowed, subject to payment of costs of Rs. 5,000/- to be deposited with the office of the Legal Services Authority, High Court, Calcutta, within a period of two weeks from date.

The delay is thus condoned. The petitioner shall file a document evidencing payment of the said cost on the returnable date.

In Re : CAN 2 of 2025

Having heard the learned advocate representing the petitioner and upon perusal of the averments made in the application for restoration, I am satisfied that sufficient

cause existed which prevented the learned advocate from appearing in Court on July, 2024, when the matter was dismissed for default.

Accordingly, application being CAN 2 of 2025 is allowed.

Order dated 24th July, 2024 is recalled. The writ petition is restored to its original number and file.

In Re : WPA 22577 of 2017

List this matter for further consideration two weeks hence.

(Partha Sarathi Chatterjee, J.)