

AD-4
Ct No.16
11.12.2024
(SSS)

FAT 348 of 2023
With
CAN 1 of 2023
With
CAN 2 of 2023

Anthony Thomas Biswas
Vs.
Mohit Singhi and Ors.

Mr. Aniruddha Chatterjee,
Mr. Soumalya Ganguli,
Mr. Sounak Banerjee, Advs.
.....For the Appellant.

Mr. Om Narayan Rai,
Mr. Prashant Agarwal, Advs.
.....For the Respondent No. 1.

1. CAN 1 of 2023 has been filed for condonation of delay in preferring the appeal. Although the respondents claim that the delay is of about 485 days, we proceed for the time being on the premise as taken by the appellant that the delay is of about 410 days.
2. The impugned decree was passed on March 16, 2021. As per the appellant, the certified copy of the same was applied for only on May 18, 2023, that is, more than two years thereafter.
3. The explanation sought to be given is that the petitioner did not contact with the learned

Advocates since long time and on May, 2023, the Power of Attorney holder of the petitioner, namely one Vikash Mohta, informed the petitioner regarding the impugned decree and the petitioner immediately contacted his learned Advocate.

4. Upon hearing learned Counsel for the parties, we find that sufficient cause for the delay has not been made out.
5. First, we find from the affidavit portion of the present application that the same Constituted Attorney namely, Vikash Mohta, who was allegedly responsible for the delay, has been stuck to by the petitioner for preferring the instant appeal and the application. Hence, the reason for the inaction on the part of Vikash Mohta ought to have been explained. It is even found from the written statement, which is a part of the record and an annexure to the stay application, that Vikash Mohta was the chosen Constituted Attorney of the petitioner all along.
6. In Paragraph No. 4 of the application for condonation of delay, the appellant/petitioner states that he was not able to contact with the learned Advocate in view of his continued ill health and the fact that the petitioner is residing outside the country. Again, in the last sentence of Paragraph 5, the same statement is reiterated.

However, there is a contradiction in the stand taken by the petitioner since, if the litigation was being looked after all along on behalf of the petitioner by his Constituted Attorney Vikash Mohta, who has also affirmed the present application, there was no reason for the petitioner to contact his Advocate.

7. If the said Vikash Mohta was responsible for the delay without any plausible reason, it would have been reflected in the petitioner choosing some other Constituted Attorney and/or preferring the appeal himself. Instead of doing so, Vikash Mohta is still the chosen Power of Attorney holder of the petitioner.
8. We find in Paragraph No. 5 that the petitioner has stated that he did not contact with the learned Advocate since a long time, which clearly denotes that the petitioner was utterly negligent in the conduct of this litigation. Not a single sentence has been spent to explain what steps the appellant took for at least contacting his Constituted Attorney during the relevant period.
9. More importantly, not a single line has been devoted in the Section 5 application or the affidavit-in-reply filed by the petitioner as to what prevented the said Vikash Mohta from preferring the appeal in time or taking steps in that regard.

10. It is well-settled that although courts are generally lenient in condonation of delay applications, such leniency is extended only to vigilant litigants and not to people who deliberately abuse the process of court.
11. In the absence of any explanation whatsoever in the application or the affidavit-in-reply for the delay occasioned in preferring the appeal, we are unable to allow the present application for condonation of delay as a matter of course.
12. Accordingly, CAN 1 of 2023 is dismissed on contest without any order as to costs. Consequentially, FAT 348 of 2023 and the connected other application bearing CAN 2 of 2023 stand dismissed as well.

(Sabyasachi Bhattacharyya, J.)

(Partha Sarathi Sen, J.)