

D/L
Item No. 10
01.05.2024
KOLE

**MAT 1962 of 2023
With
IA CAN 1 of 2024
With
IA CAN 2 of 2024
(File Not Here)**

**Kusum Halder & Ors.
-Vs.-
The State of West Bengal & Ors.**

*Mr. Pinaki Dhole,
Ms. Pranita Mondal,
Mr. Rabindra Kr. Pathak*

...for the appellants.

*Mr. Soumitra Bandopadhyay,
Mr. Srinath Singha Roy,*

...for the State.

*Mr. Tapan Kr. Rakshit,
Mr. Surajit Roy,*

...for the respondent nos. 6 and 7.

In Re: CAN 2 of 2024:

This is an application for leave to prefer appeal against a judgment and order dated August 14, 2023, whereby CAN 2 of 2022 and CAN 3 of 2022 filed by the present applicants in WP No. 30849(W) of 2014, were dismissed by a learned Judge of this Court.

The writ petition was filed originally by Bimal Halder. During the pendency of the writ petition, he died on January 14, 2016. The applicants herein, being the legal heirs of Bimal Halder, filed an application for substitution for being brought on record as writ petitioners in the place and stead of Bimal Halder, being CAN 2546 of 2016. The application was filed on March 10, 2016, i.e., within the prescribed 90 days period.

On May 6, 2016, the substitution application was dismissed for default by a learned Judge of this Court.

In the year 2022, the applicants herein filed an application for restoration of the substitution application being CAN 2 of 2022 along with an application for condonation of delay of 2307 days in filing the restoration application being CAN 3 of 2022.

By the judgment and order dated August 14, 2023, impugned in this appeal, the learned Single Judge dismissed CAN 3 of 2022 being the application for condonation of delay. Consequently, the application for restoration of the substitution application was also rejected. Although the learned Judge recorded that the other application is for restoration of the writ petition, the same is not correct. The application was for restoration of the substitution application which alone was dismissed for default on May 6, 2016.

The learned Judge recorded in the order impugned that no reason in support of the writ petitioner's prayer for condonation of delay has been stated. The petitioner has been unable to make out sufficient ground for the delay caused in filing the restoration application. Accordingly, the learned Judge dismissed the condonation application and consequently the restoration application.

Being aggrieved, the legal heirs of the original writ petitioner seek to challenge the judgment and order dated August 14, 2023. Since they are still not parties to the writ petition, they have filed this application for leave to appeal.

The applicants have sufficient cause to prefer this appeal. The application for leave to prefer appeal is, thus, allowed.

IA No. CAN 2 of 2024 is, accordingly, disposed of.

In Re: MAT 1962 of 2023 and CAN 1 of 2024:

As discussed above, this appeal is directed against an order of the learned Single Judge whereby the applicants' application for restoration of the substitution application and the applicants' application for condonation of delay in filing the restoration application have been dismissed.

We are conscious that there has been substantial delay on the part of the appellants herein, in filing the application for restoration of the substitution application. However, going through the application for condonation of delay, which has been annexed to the application filed in this appeal, we cannot say that absolutely no explanation has been furnished for the delay. We also keep in mind that almost two years were lost between 2020 and 2022 due to covid 19 pandemic.

Taking a lenient view of the matter, we are of the view that the learned Judge ought to have condoned the delay and ought to have restored the substitution application.

Accordingly, this appeal is allowed. We condone the delay in filing the restoration application and allow the condonation and restoration applications being CAN 3 of 2022 and CAN 2 of 2022 respectively thereby restoring the substitution application being CAN 2546 of 2016, subject to payment of costs of Rs. 5,000/- to be paid by the appellants

to the private respondents or their learned Advocates within a fortnight from date. In default, this appeal and the connected application shall stand dismissed.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Prasenjit Biswas, J.)