

15.03.2024
Item No.7
Court No.6.
AB

F.M.A. 137 of 2024
With
I.A. No. CAN/1/2024

Chittaranjan Bag
Vs
The State of West Bengal & Others

Ms. Debjani Sengupta,
Ms. Paulomi Ghosh ...for the Appellant.

Mr. Shamim Ul Bari,
Ms. Kalpita Paul ...for the State.

A judgment and order dated July 11, 2023, whereby an application, being CAN 2 of 2023, for restoration of a restoration application, which had been filed after dismissal of the writ petition, has been dismissed by a learned Single Judge of this Court, upon dismissing the application for condonation of delay in filing CAN 2 of 2023, is the subject matter of challenge in this appeal.

The writ petition was filed in the year 2016. It appears that the writ petition was dismissed for default on March 21, 2016. An application for restoration of the writ petition, being CAN 3967 of 2016, was filed on April 19, 2016. That restoration application was dismissed for default on June 17, 2016.

An application, being CAN 2 of 2023, was filed for restoration of the restoration application on March 21, 2023. Subsequently, an application for condonation of delay was filed on July 27, 2023.

Before the learned single Judge, it was submitted on behalf of the applicant/appellant that he is a senior citizen. He relied completely on the learned Advocate who represented him and who had been assigned by the Legal Aid Authority. He comes from an economically weaker strata of the society and that is why, he had to approach the Legal Aid Authorities. He suffers from severe gout and his movements are restricted. There was no intentional laches on his part.

The learned Judge did not find the explanation acceptable for the delay in filing CAN 2 of 2023. Accordingly, the learned Judge dismissed the application for condonation of delay and consequently, CAN 2 of 2023 was also dismissed. Hence, this appeal.

We have heard learned Counsel for the parties. The delay in filing CAN 2 of 2023 is of 1838 days. The delay is no doubt substantial. However, it is not the length of the delay, which is important. If sufficient cause can be shown, delay of any length can and should be condoned. It is also fairly established that generally, a lenient approach should be adopted by the Court in condoning delay. After all, justice warrants that matters be disposed of on merits. If an elderly

person suffering from physical challenges and financial crunch approaches the Court praying for condonation of delay, in our opinion, such prayer should be considered liberally.

Having heard learned Counsel for the parties, we are of the view that this is a fit case where the delay in filing CAN 2 of 2023 deserves to be condoned.

We, accordingly, set aside the order under appeal. The appeal is allowed. The delay in filing CAN 2 of 2023 is condoned. CAN 2 of 2023 is allowed meaning thereby the application for restoration of the writ petition is restored to the original file and number. That restoration application may now be heard by the learned Single Judge having determination in the matter.

The appeal and the connected application stand disposed of.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Supratim Bhattacharya, J.)