

19
21.02.2024
Ct. No. 11
Jayanta

WPLRT 132 of 2023

Md. Siddik Sk
vs
State of West Bengal & Ors.

Md. Nurezaman
Mr. Somen Bose
Sk. Morshed Ali

..... For the petitioner.

Mr. Somnath Gaguli, Ld. AGP
Mr. Sukalpa Seal

..... For the State/respondents.

This writ petition is directed against the order dated 5th September, 2023 passed in an application for condonation of delay being M. A. 274 of 2020 filed in connection with O. A. no. 612 of 2020 whereby the application for condonation of delay was dismissed upon exchange of affidavits. Consequently, the O. A. no. 612 of 2020 was also dismissed.

Md. Nurezaman, learned advocate appearing for the petitioner submits that the order which was assailed before the Tribunal in O. A. no. 621 of 2020 was passed on 8th August, 2019 but on the very same date the order was not signed. He contends that the law clerk applied for the certified copy but the clerk concerned lost the receipt copy of such application. Ultimately, the clerk concerned made another application for obtaining the certified copy of the aforesaid order on 20th December, 2019 which was obtained by him on 7th February, 2020 and on 28th February, 2020, the original application was preferred. According to him, for these reasons, there was a delay of 150 days (approx.) in preferring the original application. He further submits that the petitioner is an

illiterate person and he should not be forced to suffer due to the laches on the part of the dealing clerk. He contends that in the original application, the petitioners have presented a good arguable case and the petitioner has every chance of success in the original application and hence, it would not be justified to throw such meritorious litigation from the threshold of the judicial institution by adopting a hyper-technical approach.

Mr. Ganguly, learned Additional Government Pleader denies and disputes the contention canvassed by Md. Nurezaman. He submits that except the application dated 20.12.2019, no other application had been filed for such purpose. He asserts that there was intentional laches on the part of the petitioner and delay caused in preferring the original application has not been properly explained.

Heard the learned advocates. Perused the materials on record.

Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. Suffice it to observe that refusal to condone delay would result in foreclosing a litigant from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. In catena of judgments, the Hon'ble Apex Court was pleased to observe that the expression 'sufficient cause' should receive a liberal construction so as to advance substantial cause of justice. (see, judgment delivered in case of *Collector land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. reported in AIR 1987 SC 1353*). In case of N. Balakrishnan –vs- M.

Krishnamurthy, reported in (1998) 7 SCC 123, it was observed that *'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'*. When there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation.

While dealing with such application for condonation of delay or while making an examination whether the explanation given towards the delay is sufficient or not, the Court will make an effort to trace out whether there was a *mala fide* or intentional delay on the part of the party seeking remedy before the judicial institution or whether the party has adopted dilatory tactics or due to such delay, situation has been changed to such extent that condonation of delay will seriously prejudice the other party.

On studied scrutiny of the material placed before us, we do not find any material to infer that the petitioner resorted to dilatory tactics or the explanation given towards delay in preferring the original application smacks of *mala fide* and hence, we are of the considered view that in the case at hand, the learned Tribunal should have allowed the application for condonation of delay.

Consequently, the judgment impugned in the writ petition is set aside. Accordingly, the delay caused by the petitioner in

preferring the original application before the Tribunal is condoned. The original application is restored to its original file and number. The learned Tribunal is directed to hear and decide the original application on merits as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

With these observations and order, this writ petition being No. WPLRT 132 of 2023 is, thus, disposed of.

There shall, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty,J.)