

Court No. 8
15.09.2025
Item No.2
PA (Chamber)

FMA 427 of 2025

Prasanta Bhawal.
VS
The State of West Bengal & Ors.

Mr. Dr. Madhusudan Saha Roy
Mr. Debanjan Mukhiya
...for the Appellant

Mr. Dibashis Basu
...for the Respondents

Dictated by Smita Das De, J.

1. Heard the parties appearing through their respective counsels.
2. The instant intra court appeal arises out of an order dated 16.1.2025 in WPA No. 7587 of 2023 challenging inter alia, the order of dismissing the applications for restoration and condonation of delay.
3. The writ petitioner being the appellant herein was working as a CISF personnel and was accordingly removed from service on the ground showing disrespect to his senior colleague in the year 1999.
4. Being aggrieved by the order of removal, the appellant filed a writ petition being WPA 19596 of 1999 before this Court. By an order dated 17.5.2002 this Court was pleased to direct

the authority concerned for reconsideration of the issue of the appellant on the ground of the punishment being shockingly disproportionate.

5. Despite there being an order of reconsideration, the authority concerned did not act in terms of the order of the High Court, moreover, uphold the previous order of dismissal.

6. Against the order of the dismissal a further second round of litigation was initiated by the appellant before this Court being WPA 7587 of 2003. The said writ petition was dismissed for default on 13.1.16 but the same was not intimated to the appellant by the learned senior advocate engaged in the matter under reference.

7. In the mean time the senior advocate expired in the year 2023. Since the appellant entrusted the senior advocate to conduct his case, he kept aside of being vigilant enough to keep track of the same.

8. Thereafter the appellant came to learn after the demise of his senior learned advocate the matter was dismissed for default.

9. Thereafter the appellant changed his erstwhile advocate on record and engaged another set of learned counsels to conduct his case.

10. Subsequent thereto, the appellant made an attempt to collect the cause papers from the clerk of the learned senior advocate but the same was found misplaced. Finally the brief was traced on 13.8.24.

11. The appellant filed restoration application with a condonation of delay of 2750 days.

12. The learned single judge dismissed the application for restoration with an observation that the cause of the delay of 2750 days in filing the same was not sufficiently explained which became the subject matter of the instant appeal.

13. That the learned counsel for the appellant submits that due to the lapses on the part of their counsel the contesting parties should not suffer and be put in the lurch. There was no intention on the part of the appellant for the inordinate delay in filing the restoration application. The reason for the delay has been explained succinctly in the writ petition.

14. It was further submitted that the parties should not suffer for the inaction deliberate omission or misdemeanor on part of the lawyer engaged to contest the parties.

15. In the conspectus of the above, the learned counsel relies upon two judgments

reported in **(1981) 2 SCC 788** in the case of **Rafiq and Another Vs. Munshilal and Another.**

16. The same has also been referred in another case reported in **(1984) (Supp) SCC 431** in the case **Smt. Lachi Tewari and Ors. vs Director of Land Records and Others** wherein the case of **Rafiq (supra)** was also discussed. The observation made in paragraph 3 of Rafiq Supra is enumerated below:

“3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court’s procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a

particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest be represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanor of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs. 200 should be recovered from the advocate who absented himself. The right to

execute that order is reserved with the party represented by Mr. A.K. Sanghi.”

(Emphasis Supplied).

17. In view of the above we set aside the order dated 16.1.2025, condone the delay and restore the writ petition no. FMA 427 of 2025 to its original file. In the interest of justice, the learned single judge is requested to hear and dispose of the matter expeditiously. Since the matter is pending for a considerable period of time and petitioner is out of employment.

(SUJOY PAUL, J)

(SMITA DAS DE, J.)