

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Lanusungkum Jamir

AND

The Hon'ble Justice Rai Chattopadhyay

FMA 748 of 2025

With

CAN 1 of 2025

M/s. Ashmi Engineering & Advisory Services Pvt Ltd. & Anr.

Vs.

The State of West Bengal & Ors.

For the Appellants

: Mr. Swarup Paul

: Mr. Surya Maity

: Mr. Anish Roy

For the Respondent No. 3

: Mr. Meghajit Mukherjee

: Ms. Kabita Mukherjee

: Mr. Gaurav Das

: Ms. Sonia Das

For the State Respondents

: Mr. Jagabandhu Roy

: Mr. Biman Halder

Heard on

: 11/08/2025

Judgment on

: 11/08/2025

Rai Chattopadhyay, J. :-

- 1.** The present appeal is directed against an order of the Hon'ble Single Judge dated February 27, 2025, in writ petition No. WPA 30952 of 2024.

2. The matter relates to an application filed by the respondent No. 3 before the statutory Authority/Joint Labour Commissioner (P)/respondent No. 2 and Referee under the West Bengal Shops and Establishments Act, 1963. Being aggrieved by an order dated November 25, 2024 of the respondent No. 2, the present appellant, being the writ petitioner, had filed the said writ petition before the Hon'ble Single Judge. There, appellant/writ petitioner had raised an issue that the application of the respondent No. 3 before the Referee was barred by limitation, the respondent No. 2/Referee could not have proceeded with such application of the respondent No. 3 without dealing with the question of delay in filing of the said application as well as condonation thereof.

3. Therefore, before the respondent No. 2/Referee the appellants filed their application dated August 6, 2024, wherein the issue of limitation was raised by the present appellants. The appellants are aggrieved that the respondent No. 2/Referee has failed to take into consideration the issue of limitation in filing the application by the respondent No. 3. Learned Advocate, Mr. Paul appearing for the appellants has strenuously argued that the statute has specifically provided for the subject matter of limitation in case of filing an application under the provisions of West Bengal Shops and

Establishment Act, 1963, before the competent statutory Authority. He has argued that in case of an application having been filed at a belated stage, the applicant (in this case the respondent No. 3) should have filed an application disclosing the fact of delay as well as seeking condonation thereof. He says that the concerned respondent Authority could have only proceeded after considering the written prayer by the applicant for condonation of delay, in case of an application filed by him beyond the statutory period of limitation. Mr. Paul, learned Advocate has stated that in the present case, neither the applicant/respondent No. 3 has filed any application disclosing the delay or seeking condonation thereof, nor the statutory Authority/respondent No. 2/Referee has considered and decided thereupon but instead has proceeded to pass order as impugned in the said writ petition, as if there were no delay at all and no necessity to file any application for condonation of delay.

4. Secondly, Mr. Paul, learned Advocate for the appellant has emphasized that the Hon'ble Single Judge in its order dated February 27, 2025, has failed to apply mind to the above gross illegality committed by the respondent No. 2 in passing its order dated November 25, 2024. He says that the proper course of action should have been to remand back the matter before the respondent No. 2 for consideration of the issue of limitation. Allegedly instead, by condoning the limitation by itself and imposing further directions, the

Hon'ble Single Judge has acted erroneously. He submits that without the respondent No. 3 even praying for condonation of delay, the said question could not have gone into by the Hon'ble Single Judge in the impugned order dated February 27, 2025.

5. Mr. Paul in this regard, has referred to Section 14 of the West Bengal Shops and Establishments Act, 1963.
6. For the reasons as above, Mr. Paul, learned Advocate appearing for the appellant seeks that the appeal may be allowed and necessary directions may be issued.
7. Mr. Meghajit Mukherjee has represented the respondent No. 3 and Mr. Jagabandhu Roy the respondent No. 2. Both of them are in unison of opinion that there is no illegality or impropriety in the impugned order dated February 27, 2025 by the Hon'ble Single Judge. The respondents thus, seek for dismissal of the appeal.
8. Mr. Mukherjee for the respondent No. 3 has taken this Court to the written statement submitted by the present appellant before the respondent No. 2/Referee in which, he says, the appellant has not

agitated the point of delay. Hence, according to the said respondent, the issue of delay in filing the application by the respondent No. 3 before the Referee is only an afterthought one and raising the same at a belated point of time shall be barred by law as established.

9. After hearing the parties and perusal of the documents on record and legal provision, this Court finds that according to Section 14(2) *proviso* of the West Bengal Shops and Establishments Act, 1963, an application thereunder may be admitted by the Referee (respondent No. 2 in this case), after the statutory period of six months, if the applicant satisfies the petitioner or Authority that he had sufficient cause for not making the application within such period. Therefore, there is no specific provision under the law for the applicant before the Referee to file a written prayer for condonation of delay. The law has provided for satisfaction of the officer or Authority of existence of sufficient cause for not making the application within the stipulated period. Therefore, in case the Authority is satisfied as regards the cause of delay and existence of sufficient cause therefor, is empowered under the law to direct appropriately, notwithstanding a written prayer having been placed before it or not.

10. The Courts have recognized that procedural technicalities should not stand in the way of substantive justice. It is not mandatory

for an applicant to file a formal written prayer specifically requesting condonation; the court can exercise its discretion based on the facts presented.

11. Courts have consistently held that the absence of a formal application or prayer does not nullify the exercise of discretion to condone delay. That a formal application for condonation is not a legal requirement. Section 14 (2) proviso of the West Bengal Shops and Establishments Act, 1963 is an enabling provision designed to promote substantive justice rather than rigid procedural compliance. It is a settled law that the phrase “sufficient cause” is elastic and should be interpreted liberally, permitting the court to condone delay based on affidavits or explanations without insisting on a formal prayer. Absence of a formal prayer does not invalidate the Court’s power to condone delay, provided the court is satisfied with the explanation or cause shown. The true test is due diligence and in absence of, any intentional laches or mala fide of the applicant, the Court is to exercise discretion, as vested under the law.

12. The Referee has passed an order dated November 25, 2024 which has not been allegedly an order dealing with the limitation. Hence, the Hon’ble Single Bench in its order dated February 27, 2025 has considered and rightly so that the proceedings before the Referee

have already been initiated and progressed substantially. That the Referee has directed the present appellant to file written objection as to the claim of the applicant/respondent No. 3 before the same. In such view of the fact, the Hon'ble Single Judge has condoned delay in preferring the said application before the statutory Authority, by the respondent No. 4.

13. The Hon'ble Single Judge while exercising jurisdiction under Article 226 of the Constitution of India is vested with wide power and authority to pass a direction for the enforcement of Fundamental Rights and for "any other purpose". Such wide power of the Court therefore be inclusive of an order which the Court thinks prudent for the purpose to secure ends of justice.

14. Having noted that the statute would not require mandatorily a written prayer to be submitted by the applicant before the respondent Authority for it to be satisfied about the sufficiency of cause of any delay in filing the said application before it, this Court is of considered opinion that the Hon'ble Single Judge when passes an order for condonation of delay in exercising of the wide power granted under Article 226 of the Constitution of India, does no wrong. The submission made that an order for condonation of delay, is ex facie

bad in absence of any prayer by the applicant is not found to be an apt one.

15. For the reasons as discussed above, the Court finds no merit in the instant appeal. Hence, Appeal No. FMA 748 of 2025 is dismissed.

16. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Lanusungkum Jamir, J.)

(Rai Chattopadhyay, J.)