

30.06.2025
Item No.11.
Ct. No.446.
gd

CO/1776/2018
SK MUFIZUDDIN & ANR.
VS
ISMAIL ALI KHAN & ORS.
IA NO: CAN/1/2022, CAN/2/2022

Mr. Keshab Chandra Das
..for the Petitioners.

Mr. Moinuddin Mondal,
Ms. Jayashree Saha
..for the OP No.1.

This is an application filed under Section 5 of the Limitation Act to condone the delay of 995 days in preferring the application for restoration of the order dated March 19, 2019 passed by the Coordinate Bench.

It is submitted by the learned advocate for the petitioners that because of the ill health the advocate-on-record could not reach the court on March 19, 2019 when the matter was called for hearing and, accordingly, the matter was dismissed for default. Thereafter the petitioners kept in complete dark of dismissal but the learned advocate informed the petitioners, but the petitioner no.1 could not contact with the learned advocate for his illness.

The further ground has been taken that the order has been passed beyond his knowledge and thereafter because of the Pandemic situation of Covid-19 the

petitioners could not contact with the learned advocate and thereafter there is a delay of 995 days.

The learned advocate appearing on behalf of the opposite party no.1 raises strong objection and it is submitted that after the order of dismissal was passed the matter was put in execution and the same was proceeded with where the petitioners appeared and contested but never raised the issue of this matter and in the year 2025 first time the learned advocate of the petitioners has taken this point when he filed this restoration application in the year 2022.

Having heard the learned advocate and on careful perusal of the application under Section 5 of the Limitation Act and the number of days delay, this court finds that the grounds mentioned herein are not satisfactory enough.

This is the observation made time and again by the Hon'ble Supreme Court in various judicial pronouncements that the court must be lenient in his approach while considering the application for Condonation of delay subject to showing of sufficient cause.

The sufficient cause is guided by the principle of fairness and justice and should not be considered or discretionary power of the court should not be exercised when there is utter negligence in approaching the court.

The unfortunate part of this case is that the learned advocate filed the application in the year 2022 when the order of dismissal was passed on March 19, 2019. No date has been mentioned as to when he informed the petitioners.

Furthermore, he has taken the ground of Pandemic situation of Covid-19 before the Pandemic started in the year 2020. There was almost one year to take appropriate steps against the order.

According to the submission of the learned advocate of the opposite party no.1, the execution case being Misc. Case No.39 of 2009 pending before the learned Civil Judge (Junior Division), 2nd Court, Chandannagore, Hooghly is already fixed for final argument and the opposite party no.1 was directed to make certain deposit.

Therefore, considering the above facts and circumstances, this court is unable to consider the prayer for condoning the delay of 995 days in filing the application for restoration and, accordingly, CAN 1 of 2022 stands dismissed.

In view of the dismissal of the Section 5 application being CAN 1 of 2022, the application for restoration/recalling the order dated March 19, 2019, being CAN 2 of 2022 also stands dismissed.

(CHAITALI CHATTERJEE (DAS), J.)

