

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. No. 1022 of 2025

India Electrodes and Company
vs.
State of West Bengal & Ors.
With
CAN 1 of 2025

For the Appellant : Mr. Uday Narayan Betal
Mr. Bhaskar Hutait

For the State : Mr. Swapan Kumar Dutta, Sr. Adv., & A.G.P.
Mr. Dipnakar Dasgupta

Heard & Judgment on : **July 16, 2025**

DEBANGSU BASAK, J.:-

1. Affidavit of service filed in Court be taken on record.
2. The appeal is directed against an order dated May 15, 2025 passed in W.P. (W) 13911 of 20211 with CAN 1 of 2025 and CAN 2 of 2025.
3. By the impugned order, learned Single Judge was pleased not to accept the causes shown in making and filing the applications belatedly for recalling an order of dismissal of a writ petition for default.

4. Learned advocate appearing for the appellant submits that the writ petitioner was diligent in conducting the litigation. The writ petition was pending for a sufficiently long period of time. The writ petition was initially taken up for consideration in 2011. Thereafter, the writ petition appeared in the cause list in 2022. The writ petition stood dismissed for default on September 22, 2022 when the learned advocate for the writ petitioner missed the matter in the list as he was unaware that the matter was appearing in the list. Subsequently a partner of the appellant came to know of the same and immediately thereafter applied for recalling of the order of dismissal for default as also applied for condonation of delay.
5. Learned advocate appearing for the appellant draws the attention of the Court to the averments made in the application for condonation of delay. He submits that a plausible cause explaining the delay stands made out. In any event, the litigant should not suffer for the fault of an advocate.
6. Learned senior advocate appearing for the State of West Bengal submits that the writ petition is pending since 2011. The appellant was not diligent in proceeding with the hearing of the writ petition. He submits that the learned Single Judge rightly did not accept the causes shown for the condonation of delay.
7. We considered the materials available on record.
8. We find that the appellant filed a detailed application for recalling of the order of dismissal dated September 22, 2022 as also for condonation of delay in making and filing of such application for recalling. In the application for condonation of delay, the appellant

made out a case that prior to September 22, 2022 the writ petition was lastly taken up for consideration on September 2, 2011. Thereafter, the writ petition appeared in the cause list when it was dismissed for default on September 22, 2022.

9. Appellant refers to the COVID 19 Pandemic and states that it was in March, 2022 normal business started resuming. It is also claimed on behalf of the appellant in the application for condonation of delay that the learned advocate did not notice the matter in the list on September 22, 2022 and was unaware of the dismissal of such writ petition on such date.
10. According to the appellant, it derived knowledge on March 13, 2025 when it came to learn for the first time that the writ petition stands dismissed for default on September 22, 2022. Thereafter, appellant took expeditious step for the purpose of filing of two applications.
11. An application for condonation of delay is required to be considered leniently. A plausible explanation should be accepted. Moreover, defaults of the learned advocate need not be foisted upon the litigant. Court should be concerned with the quality of the explanation and not with the quantity of the delay.
12. In the facts and circumstances of the present case, apparently, there is a delay of about 954 days. Respondents herein did not use any affidavits opposing the two applications before the learned Single Judge. The applications contained plausible explanations for the delay. We are not in a position to wish away the explanations offered

by the appellant as unacceptable particularly when the same remains uncontroverted by the respondents.

13. Moreover, on the principle that the default of the advocate concerned in not noticing the matter in the list on September 22, 2022 and, therefore not appearing for the appellant in Court, should not be foisted upon the appellant. Apparently, the appellant took requisite steps as a litigant, engaged an advocate and reasonably believed that such advocate would be conducting the writ petition on its behalf.
14. In such circumstances, we deem it appropriate to set aside the impugned order dated May 15, 2025 dismissing CAN 1 of 2025 and CAN 2 of 2025 of the appellant. We allow both CAN 1 of 2025 and CAN 2 of 2025 of the appellant. We recall the order dated September 22, 2022 passed in W.P. (W) 13911 of 2011. W.P. (W) 13911 of 2011 stands restored to its original file and number.
15. Learned Single Judge is requested to hear and dispose of the writ petition on merits.
16. M.A.T. 1022 of 2025 and the connected applications stand disposed of without any order as to costs.

(Debangsu Basak, J.)

17. I agree

S.D.

(Md. Shabbar Rashidi, J.)