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18.02.
2025

Ct. No.
08

Ab

MAT 2260 of 2024
IA No. CAN 1 of 2025
IA No. CAN 2 of 2025

The State of West Bengal and others
Vs.
Dayananda Anglo-Vedic Secondary School and others

Ms. Payel Mitra.
... for the appellants.

Mr. Sandip Kumar De,
Mr. Abhijit Sarkar.
... for the respondent no.1.

Re: CAN 1 of 2025

This application has been taken out seeking condonation of delay of 246 days in preferring the proposed appeal.

Ms. Payel Mitra, learned Advocate representing the appellants/applicants, argues that there was no intentional laches or negligence on the part of the appellants, and that the delay was caused by the factors beyond their control. She submits that although a day-to-day explanation has not been provided in the application, the delay has been sufficiently explained.

Mr. Sandip De, learned Advocate appearing on behalf of the writ petitioner/respondent no. 1, vehemently opposes the contention raised on behalf of the appellants. Inviting our attention to the averments made in paragraphs 4 to 7 of the application, he submits that the certified copy was delivered to the appellants within three days of receiving the application, yet the appellants took nearly eight months

to file the present appeal. He further submits that no explanation has been provided for the inordinate delay in presenting the Memorandum of Appeal before this Court.

Before addressing the contentious issue raised in this application, it would be appropriate to outline the key facts that led to this appeal. A selection process was initiated by the Managing Committee of Dayanand Anglo-Vedic Higher Secondary School, a minority educational institution, to fill certain teaching and non-teaching staff positions. However, the Joint Secretary of the School Education Department, through a communication dated September 13, 2019, instructed the school authorities not to proceed with the recruitment process. The school authority challenged the communication dated 13.09.2019 in WPA 18852 of 2019. The learned Single Bench, by passing the order sought to be assailed in this proposed appeal, accepted the contention of the school authority and allowed the writ petition, thereby permitting the school authority to proceed with the recruitment after setting aside the communication. Aggrieved by this order, the proposed appeal has been filed at the behest of the State of West Bengal and its functionaries. As the appeal is time-barred, an application for condonation of delay has been filed.

The averments made in paragraphs 4 to 7 of the application, which are crucial for the effective adjudication of the matter, need to be reproduced, which are as follows

“4. Your applicants/appellants state that initially for three

weeks the copy of the order dated 11.03.2024 was not available in the official website of the Hon'ble High Court, Calcutta for which the applicant/appellant did not have clear idea about the order passed in the instant issue. After that the Puja Vacation was there naturally Court was off for certain days.

That finding no other alternative the applicant/appellant applied for certified copy of the order on 22.04.2024 and finally the certified copy of the order was supplied to the clerk of the Learned Advocate which the applicants/appellants received on 25.04.2024.

A Photostat copy of the writ petition vide W.P.A. No. 18852 of 2019 is annexed herewith and marked as annexure "P-1".

5. That your applicants/appellants state that since the applicants/appellants were unaware of the further legal proceeding after order of the writ petition in the Hon'ble High Court, Calcutta, the applicants/appellants could not move the instant appeal at the earliest opportunity and took some time to get information regarding the further course of proceeding i.e. filing of an appeal by challenging the order passed the Hon'ble Single Bench of this Hon'ble High Court.

6. That your applicants/appellants state that there is change of Learned Advocate and from the

erstwhile Advocate on Record the matter alongwith all other documents were brought to the present Advocate on record on first week of November which took a considerable period of time due to change and hand over of all documents.

7. That your applicants/appellants state that after obtaining all material records the present Advocate took unusual time to study the matter and prepare the drafts and upon finalization of the same the appeal was fixed on 12.12.2024.”

Undeniably, a party seeking condonation of delay in filing an appeal or application cannot be required to provide a day-to-day explanation. However, the explanation must be acceptable. The law of limitation is substantive law and has definite consequences on the rights and obligations of the parties. It is a well-settled principle of law, as expounded in a series of judgments by the Hon'ble Supreme Court, that once a valuable right accrues in favour of one party due to the other party's failure to explain the delay with sufficient cause, it would be unreasonable to take away that right merely at the applicant's request, especially when the delay results directly from negligence, default, or inaction by that party. Justice must be done impartially to both parties. The concept of a 'liberal approach' must be balanced with the 'concept of reasonableness.'

Reverting to the case at hand, it is evident that the order sought to be challenged in this proposed appeal was

passed on 11th March 2024. The application for obtaining the certified copy was submitted on 22nd April 2024, and it was delivered to the appellants on 25th April 2024. Subsequently, the Memorandum of Appeal was presented in this Court on 12th December 2024. Therefore, it is clear that there was a delay of eight months in presenting the Memorandum of Appeal, even after the appellants had obtained the certified copy of the order.

Therefore, upon a close scrutiny of the averments made in paragraphs 5 to 7, we find that no plausible reason or acceptable cause has been provided to justify the delay. The appellant, State of West Bengal, has claimed that it was unaware of the further legal proceedings after the order was passed by the Single Bench of this Court. It took the State almost seven months to become aware of the further legal steps and to engage a suitable learned advocate for the preparation and presentation of the Memorandum of Appeal. Such an explanation is difficult to accept.

Given the circumstances, we are not inclined to entertain the present application. We are of the considered opinion that the appellants/applicants have failed to sufficiently explain the delay. Accordingly, the application is dismissed.

In view of the dismissal of the application for condonation of delay, the appeal and the connected application, being CAN 2 of 2025, have become infructuous and are accordingly dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Partha Sarathi Chatterjee, J.)