

14.01.2025
Item No.01
Court No.11
Avijit Mitra

WPLRT 166 of 2024

In re: An application under Article 226 of the Constitution of India;
And

Gouri Mondal
- versus -
State of West Bengal & ors.

Mr. Binoy Kumar Das
... for the petitioner
Mr. T.M. Siddqui, Ld. A.G.P.,
Mr. Suddhadeb Adak
...for the State respondents

The present writ petition has been instituted challenging the order dated 24th September, 2024 passed by the learned Tribunal in an original application (in short, OA) being O.A. 3616 of 2022. By that order, the learned Tribunal refused to condone the delay, and declined to admit the OA.

Mr. Das, learned counsel for the petitioner, submits that the delay in filing the original application within the prescribed period has been adequately explained in the OA. He argues that the petitioner has a strong and arguable case, and such a meritorious matter should not be dismissed at the threshold by the Tribunal on technical grounds. He further contends that this issue was raised before the Tribunal, but the Tribunal overlooked it and failed to provide any findings which warrant intervention by this Court.

Mr. Giri, learned advocate enters appearance on behalf of the respondent nos. 7 to 11, and adopts the submission of Mr. Das.

Mr. Ghosh, learned counsel for respondent No. 6, submits that no specific prayer for condonation of delay was made in the OA. He argues that it is a settled legal principle that no separate application for condonation of delay is necessary before the Tribunal but there must be a prayer for condonation of delay in the OA.

Mr. Siddiqui, learned Additional Government Pleader enters appearance on behalf of the State respondents.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

In the present case, although no separate application for condonation of delay was filed, the delay is explained in paragraph 5 of the OA, and a prayer for condonation of delay is made in paragraph 9. When considering an application for condonation of delay, the Court must examine whether the delay has been properly explained and whether there is a sufficient cause that prevented the applicant from filing the application within the prescribed period.

The expression '*sufficient cause*' employed by the legislature in the relevant provision dealing with the issue of condonation of delay should receive a liberal construction when no negligence or

inaction or want of bona fide is imputable to the party. Acceptance of explanation furnished should be the rule and refusal is an exception. The length of delay is not a matter but acceptability of the explanation is the only criterion. While dealing with such application, a Court or judicial institution shall also consider whether the delay which has occasioned is mala fide or intentional or by adopting such dilatory tactics whether the applicant or litigation want to gain any advantage illegally. Originally, no litigant does stand to take any benefit by filing a time-barred application or appeal before a Court of law.

In the present case, after carefully examining the explanation provided in Paragraph 5, we find that the petitioner has presented an arguable case. It is important to note that delays in litigation may involve some lapse on the part of the litigant, but such reasons alone are insufficient to dismiss the plea, provided there is no evidence of mala fides or a deliberate attempt to delay the proceedings. We have found no material suggesting that the petitioner has employed dilatory tactics for any ulterior motive. Accordingly, we believe that this meritorious matter should not be dismissed at the outset and should be allowed to proceed before the Tribunal.

The order dated 11th September, 2022 passed in the OA indicates that the learned Tribunal directed the respondents to file affidavit-in-opposition to the OA and we are informed that the affidavit-in-opposition was also filed but without affording any

opportunity to the petitioner to file affidavit-in-reply, the learned Tribunal concluded hearing and reserved judgment.

In view thereof, we are of the view that the learned Tribunal should have condoned the delay and admitted the OA. Consequently, the order under challenge in this writ petition is set aside. The OA is restored to its original file and number and the same shall be treated to be admitted.

The learned Tribunal is directed to consider and dispose of the original application on merit as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

The petitioner would be at liberty to file such affidavit-in-reply to the said affidavit-in-opposition within two weeks from date with a copy to the Learned Advocates of the respective parties.

With the above observations and directions, the writ petition is disposed of.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)