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ORDER SHEET

APOT/88/2024
WITH
CS/411/1981
IA NO: GA/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

ANUP KUMAR JAISWAL AND ANR
VS
VISHNU NARAYAN KASHYAP AND ORS

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE
AND

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 16th July, 2025

Appearance:

Mr. Meghnath Dutta, Adv.
Mr. Arindam Paul, Adv.
Ms. Sohini Chowdhury, Adv.
..for the appellants

Ms. Madhupriya, Adv.
Mr. A. Sinha, Adv.
Mr. A. Dutta, Adv.
..for the respondents

The Court: By consent of the parties, the appeal and the connected application are taken up for hearing together.

This appeal is directed against an order dated February 9, 2024, whereby a learned Judge of this Court dismissed GA/13/2023, being an application for restoration of GA/12/2022, which was dismissed for default on August 22, 2022.

The impugned order is a short one and is reproduced hereunder:-

“The Court: This is an application for recalling of an order dated 22 August, 2022. By such order, an application for condonation of delay in filing the written statement was dismissed for default.

It is submitted on behalf of the applicant that due to reasons known to the erstwhile Advocate, the written statement has not been filed for more than 40 years. There is no other justification for recalling of the order.

On behalf of the plaintiff, it is contended that there are no reasons whatsoever in the filing of this application and no grounds have been made out for recalling of the order dated 22 August, 2022.

It is obvious that the litigant has taken no steps in this matter. No litigant is relieved of his or her duty and obligation on the ground that an Advocate had been engaged. There is no straitjacket formula in such cases for condonation. Each case has to be weighed on its own facts and circumstances. The applicants have been callous and negligent in proceeding with this suit. No written statement has been filed for more than 40 years.

In such circumstances, the application is bereft of any grounds whatsoever which warrant recalling of the order dated 22 August, 2022. The ground made out in this application is

without any substance. Accordingly, there is no scope of passing any order in favour of the applicant.

In such circumstances, GA/13/2023 stands dismissed.”

Being aggrieved, the applicants in GA/12/2022 have come up by way of this appeal.

Learned Advocate for the appellants says that the appellants were constantly in touch with their erstwhile Advocate who did not appear on the day the matter was dismissed for default. This they came to know after some time. They changed their Advocate and an application was made for restoration. The learned Judge ought not to have considered the merits of the application for extension of time to file written statement while deciding whether to restore that application which had been dismissed for default on August 22, 2022.

Learned Advocate for the respondents/ plaintiffs vehemently opposes the prayer of the appellants. Learned Advocate says that the appellants have been dormant for the last 44 years. The suit is of 1981. Till date, they have not filed written statement. 41 years after the institution of the suit, the appellants filed an application for extension of time to file written statement. Even that application they allowed to be dismissed for default. The learned Judge rightly did not restore the appellants’ application for extension of time to file written statement.

We have considered the rival contentions of the parties.

It is indeed shocking that though 44 years have passed since the suit was filed, the appellants have not filed their written statement. They

approached the Court for extension of time to file written statement, 41 years after institution of the suit. We do not wish to make any comment on the merits of such application. Today, we are concerned only with whether or not that application should be restored.

Considering the facts and circumstances of the case and the averments in the petition for restoration and taking a lenient view, we allow this appeal and restore GA/12/2022 to its original file and number, upon the appellants paying costs assessed at Rs.25,000/- to the plaintiffs within a week from date. In case of non-compliance of this order as regards the payment of costs, the plaintiffs would be at liberty to draw the same to our attention.

We clarify that we have not addressed the merits of the appellants' application for extension of time to file written statement at all. The same will be decided on its own merits and in accordance with law.

The appeal is disposed of along with the connected application.

(ARIJIT BANERJEE, J.)

(RAI CHATTOPADHYAY, J.)

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