

15.01.2026
Item No.09
Court No.11
Avijit Mitra

**FMA 1340 of 2025
with
IA No.CAN 1 of 2025**

**Pushpendu Naskar
- Versus -
S.D. Controller (F&S) Canning & ors.**

Mr. Manoranjan Jana
....for the appellant
Mr. Suman Sengupta, Sr. Govt. Adv.,
Mr. Nirmalya Biswas,
Mr. Sanatan Panja
....for the State

Affidavit-of-service, as filed, be kept on record.

The present appeal has been preferred challenging an order dated 21st April, 2025 passed in an application for restoration filed along with an application for condonation of delay in connection with a writ petition being WPA 22637 of 2007. The said writ petition was preferred challenging, *inter alia*, a licence transferred in the name of the private respondent no.5.

Records reveal that the said writ petition was filed in the month of October, 2007 and the same was dismissed for default on 16th August, 2021. Subsequent thereto, the writ petitioner/appellant herein preferred a fresh writ petition being WPA 24190 of 2024 and the same was disposed of by an order dated 6th November, 2024 observing, *inter alia*, that the appellant ought to have approached the appropriate bench to recall the order of dismissal in the earlier writ petition. The said order was not challenged by the

appellant instead he filed a restoration application along with an application for condonation of delay in the said writ petition being WPA 22637 of 2007. By the order impugned in the present appeal, the restoration application was turned down as barred by limitation.

Mr. Jana, learned advocate appearing for the appellant submits that due to COVID, no one could enter appearance on behalf of the writ petitioner in WPA 22637 of 2007 when the same was dismissed for default on 16th August, 2021. Such fact was not taken into consideration while passing the order impugned.

He contends that the first writ petition being WPA 22637 of 2007 is not identical to the second writ petition being WPA 24190 of 2024 and as such the learned single Judge erred in law in observing that both the writ petitions were filed on the self-same issue.

Mr. Biswas, learned advocate appearing for the State vehemently opposes Mr. Jana's prayer and submits that no explanation was furnished by the appellant as regards the delay in preferring the application for restoration of the writ petition and the appellant is claiming premium upon the illegalities perpetrated by him.

Heard the learned advocates and considered the materials on record.

In the order impugned it has, *inter alia*, been observed that after the writ petition being WPA 22637 of 2007 filed in the month of October, 2007 was dismissed on 16th August, 2021, another writ petition was filed on the self-same issue. None appeared on behalf of the appellant on the date of dismissal of the writ petition and the entire burden was shifted upon the learned advocate for such non-appearance stating that the learned advocate was not diligent to do the matter. Instead of filing a restoration application immediately after dismissal for default, a further writ petition was preferred in the year 2024. The said writ petition was also disposed of observing that the appellant ought to have filed a restoration application. The said order was also not challenged by the appellant.

In the said conspectus, the learned single Judge refused to exercise discretion in favour of the appellant and we do not find any infirmity in the order impugned warranting interference in the present appeal.

Accordingly, the appeal and the connected application are dismissed.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

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

