

Misc Arb. 3/21  
(CNR WBDJ160000032021)

Order no. 35  
31.08.2021/01.09.2021

The record is put up today by petition filed at the instance of the State (of West Bengal).

The State's application under Sec. 34 of the Arbitration & Conciliation Act, 1996 registered as Misc Arb . 3/21 was dismissed for non-appearance on 17.07.2021. The State now asks for restoration and to that end has filed an application U/O IX rule 9 of the CPC along with an application under Sec. 5 of the Limitation Act, 1963.

It appears from the record that on 17.07.2021 both sides were absent. Thus, the position is governed by rule 4 of Order XI and not rule 9 of the latter.

Restoration in cases controlled by rule 4 does not necessitate hearing the other side.

Although the State's restoration bid is beyond the limitation period (by a few days), the respondent shall not be irreparably injured in any way or manner if the same is allowed and this is all the more so when the pandemic has been urged as the reason behind the non-appearance. However, the State's adversary is entitled to costs assessed at Rs. 1000/ and this ought to be adequate compensation in lieu of the right to formally object to the Sec. 5 application.

The delay is condoned subject to the payment of costs (supra) and upon such payment the principal application under Sec. 34 shall be restored to its file.

The State is directed to forthwith communicate the gist of today's order to the respondent by speed post with A/D. Communication may also be made by email, if possible. The next date (infra) should form a part of the communicate.

Put up the record on 1 October 2021 for appearance, payment of costs and further order.

Judge (WB00809)  
Comm Court, Siliguri.