

D/L.10.
March 24, 2025.
MNS.

FA No. 176 of 1998
+
CAN 5 of 2024

Sudhangshu Kumar Dey
Vs.
Ashok Kumar Dey

Mr. Anit Kumar Rakshit,
Mr. Subham Rakshit

...for the appellant.

1. Leave is granted to the learned Advocate for the appellant to file the affidavit-of-service, as directed earlier, during the course of the day.
2. However, an unaffirmed copy thereof is handed over for the court's perusal, from which it transpires that the respondent was intimated but chose not to receive/accept the service.
3. As such, we deem same to be good service and take up the application for hearing.
4. In the application, it has been stated that the appellant was suffering from COVID 19-related health issues during the period immediately prior to the relevant date of dismissal of the appeal on April 21, 2022.
5. Moreover, the learned Advocate for the appellant missed the matter in the list and could not take steps. Upon learning of the dismissal of the appeal for default, steps were taken and the present application has been filed.

6. Since we cannot attribute any *mala fides* as such to the appellant and as the dismissal of the appeal would not enure to the benefit of the appellant in any manner, we are satisfied that sufficient grounds have been made out for condonation of the delay and to recall the order of dismissal of the appeal for default.
7. Accordingly, CAN 5 of 2024, is allowed, thereby recalling the order dated April 21, 2022 and restoring FA No. 176 of 1998 along with CAN 3 of 2003 (Old CAN 1217 of 2003) as well as CAN 4 of 2007 (old CAN 2261 of 2007) to their respective files and numbers on condonation of delay in filing the present application.
8. There will be no order as to costs.
9. The above applications be listed for hearing on April 1, 2025.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)