



Ct. 12.11
No. 237
26
akb

2024

RVW 303 of 2024

IA No. CAN 1 of 2024

IA No. CAN 2 of 2024

In

S.A. 351 of 1995

IA No. CAN 11 of 2024

IA No. CAN 12 of 2024

Sima Sengupta & Anr.

-Versus-

Avik Sengupta & Ors.

Mr. Chittapriya Ghosh

Mr. Sourav Kumar Mukherjee

Mr. Pawan Kumar Gupta

Ms. Sohini Chakraborty

Ms. Sahama Pal

...For the Applicants

Mr. Amal Krishna Saha

Mr. Souvik Sarkar

...For the Respondent No. 1

Mr. Pinaki Bhattacharya

Mr. Asoke Das

...For the Respondent Nos. 2 & 3

Re.: IA No. CAN 1 of 2024 (recalling)

IA No. CAN 2 of 2024 (condonation)

Re.: IA No. CAN 11 of 2024 (recalling)

IA No. CAN 12 of 2024 (condonation)

Affidavit-in-opposition to the applications, being
IA No. CAN 1 of 2024 and IA No. CAN 11 of 2024 filed on
behalf of the respondent Nos. 2 and 3 are taken on record.

The application is for condonation of delay in
filing the application for review, being RVW 303 of 2024
and the application, being IA No. 12 of 2024 is for
condonation of delay in filing the application for recalling,
being IA No. 11 of 2024 of the order dated 29th April, 2024.

Having gone through the grounds shown in both
the applications it appears that the petitioner has contended



that the petitioner was wholly dependent on the learned Advocate, who was pursuing with the said appeal but thereafter only on 28th July, 2024 he could ascertain when the landlord is perpetrating to deal with the said property and then he made contact with Mr. Avik Sengupta, who informed him that the appeal has already got dismissed. Since, he did not disclose anything further, petitioner immediately contacted with Mr. Sourav Kumar Mukherjee, learned Advocate and made conference and thereafter decided to make those applications for review, recalling and for condonation of delay.

Mr. Chittapriya Ghosh, learned Counsel submits that the petitioners were prevented by sufficient reason in filing the applications and there was no laches in filing the applications. In such circumstances he prayed for disposal of condonation prayer in connection with the review application, being RVW 303 of 2024 and also for condonation of delay in respect of prayer for recalling of the order dated 29th April, 2024, in respect of which delay has been caused for about 146 days.

Mr. Amal Kumar Saha, learned Counsel appearing on behalf of the respondent No. 1 submits that the review application itself is not maintainable since the petitioner/tenant has left the suit premises long back and he



has sufficient proof to show that the petitioner was not residing with the tenants, who made the compromise at the time of death of the original tenant.

Accordingly, since the main review application is not maintainable so prayer for condonation of delay does not have any substance and is not required to be allowed.

He also submits that the grounds mentioned in the application for condonation of delay is not convincing, since he has not made it clear why the order of dismissal was not known to him.

Mr. Pinaki Bhattacharya, learned Counsel appearing on behalf of the respondent Nos. 2 and 3 submits that the cause title of the said application appears to be defective on the ground that there is no applicant, who is filing the application and in such view of the matter the application is mis-conceived and not maintainable. Petitioners are not entitled to get any relief and the grounds for condonation of delay mentioned in paragraph 9 and 10 of the application are all incorrect and he denied categorically the contents of each and every allegation made in the application for condonation of delay.

In the abovementioned submissions, the petitioner has also relied on an unreported decision of the Hon'ble Apex Court in the case of *Sheo Raj Singh (Deceased) Through LRS.*



& Ors. Vs. Union of India & Anr. dated 9th October, 2023.

I have considered the submissions made on behalf of the parties. It appears that the petitioners have made out a case that owing to the laches of the person upon whom he had placed reliance did not give him information about the order in respect of which he has prayed for recalling. On perusal of the written objection filed by the opposite parties I find that it contains mere denial of the grounds made in the condonation prayer by the petitioner.

Considering the grounds shown in the petition and keeping in view the weighty consideration that so far as practicable, a litigant ought not to be denied a hearing on merits, I am inclined in the facts and circumstances of the case to condone the delay in filing the aforesaid applications.

In such view of the matter, the delay in filing the application for review, being RVW 303 of 2024 and the application for recalling the order dated 29th April, 2024 being IA No. CAN 11 of 2024 is hereby condoned.

The review application, being RVW 303 of 2024 along with the IA No. CAN 11 of 2024 are accordingly admitted. The applications, being IA No. CAN 2 of 2024 and IA No. 12 of 2024 are accordingly disposed of.

Learned Counsel appearing on behalf of the respondent No. 1 seeks to file affidavit-in-opposition.



Let such affidavit-in-opposition be filed within 10
(ten) days from date.

Let the matter appear under the heading
'Application' on 25th November, 2024.

(Dr. Ajoy Kumar Mukherjee, J.)