

18.9. 2025
item No.4 & 5
n.b.
ct. no. 24

WPA 13326 of 2002

with
CAN 1 of 2024
+
CAN 2 of 2025
+
CAN 3 of 2025

Amiya Chandra & Ors.
Vs.
State of West Bengal & Ors.
With
WPA 27725 of 2013

Ms. Sumita Chandra
Vs.
The State of West Bengal & Anr.

Mr. Prabir Kumar Misra,
Ms. Ankita Misra,
Mr. Priyam Misra,
Mr. Sanket Chandra,
.... For the petitioner.
Mr. Soumitra Bandyopadhyay,
Mr. Priyabrata Batabyal,
..... for the State respondent.

In Re. CAN 1 of 2024

This is an application for restoration of instant writ petition by setting aside order dated 8.9.2015 of WPA No. 13326 of 2002.

In Re. CAN 3 of 2025

This is an application under Section 5 of the Limitation Act for condonation of delay of 3210 days in filing restoration application being CAN 1 of 2024.

Learned counsel appearing on behalf of the petitioner submits that the petitioners were diligent to proceed with the instant matter.

It is the contention of the learned counsel for the petitioner that the petitioners' brother, mother, sisters are the petitioners in WPA 13326 of 2002 and the petitioner himself the only petitioner in writ petition being WPA 27725 of 2013. As there are common grievances in both the writ petitions, when the matters appear before the co-ordinate Bench, the said bench has taken note for the same and passed an order for analogous hearing of both the writ petitioners vide order dated November 28, 2013. Thereafter, both the petitioners were proceed analogously through, separate orders are made in both the writ petitions. When the matter was called on for hearing before the appropriate Bench having determination on September 8, 2015, learned counsels were engaged in other mattes in other court, accordingly, none appears on behalf of the petitioner and co-ordinate bench has dismissed both the writ petitions for default vide separate orders on 8.9.2015.

Learned advocate on record on behalf of the petitioner has filed an application for restoration along with application for condonation of delay under Section 5 of the Limitation Act for restoring writ petition being

No. WPA 27725 of 2013, but no such was filed in respect of instant writ petition being WPA 13326 of 2002.

After hearing the parties a co-ordinate Bench has restored the writ petition being WPA 27725 of 2013 by its order dated August 25, 2017. But unfortunately, no steps were taken or order has been passed in respect of WPA 13326 of 2002 through both the matters were running analogously. At the time of hearing of the matter, it appears to the knowledge of the petitioner that this writ petition was not restored earlier by order dated August 25, 2017 so, he filed the instant application for restoration.

Learned counsel for the petitioner submits that though there is huge delay about 3210 days, but such delay has been occurred due to mistake of the learned counsel, who did not file any application for restoration in connection with the instant matter. He further submits that the petitioner were not aware of the fact with the instant matter was not restored by the earlier order dated August 25, 2017. Hence this instant application for restoration was filed in delay.

He further submits that circumstances were out of control of the petitioner being not aware about the legal procedure, but they only placed reliance upon the learned advocate on record for restoration of the matters but he was unaware about the fact that WPA 13326 of

2002 was not restored. He prayed for necessary order of condonation of delay and for restoration of writ petition.

Learned counsel appearing on behalf of the respondent authority raised strong objection and submits that the Hon'ble Division Bench in **H. Gureuswamy & Ors. Vs. A Krishnaiah since deceased by lrs.** reported in **2025 Supreme(SC) 66** has categorically observed that the length of delay has to be taken note in passing an order under Section 5 of the Limitation Act. He submits that the grounds assigned by the petitioner in the application being CAN 3 of 2025 is not sufficient and reasonable, no reasons have been assigned by the petitioner, why he caused such a long delay in filing instant application for restoration. He referred paragraph 16 of **H Gureuswamy & Ors.(supra)**.

“16. The length of the delay is definitely a relevant matter which the court must taken into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be

preferred as against the technical consideration. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.”

Heard the learned counsel and perused the application being CAN 3 of 2025 and grounds thereunder including the supplementary affidavit filed in support of that application today. It appears that there is long delay of 3210 days. It is sole contention of the petitioner that the petitioner was not aware that the instant writ petition was not restored, though she has instructed his advocate on record to restore the writ petitions.

It appears that vide order dated November 28, 2013 a co-ordinate Bench of this Court has passed an order that both the writ petitions being WPA 22725 of 2013 as well as WPA 13326 of 2002 shall be heard analogously. Since then the writ petitions are heard analogously but order are passed separately. On September 8, 2015 both the writ petitions are dismissed for default for non appearance of the petitioner. Facts suggests that writ petition being no. WPA 22725 of 2013

was restored vide an order dated August 25, 2017 by a co-ordinate Bench of this Court for condonation of delay. As separate orders are passed in connection with both the writ petitions, though analogously reasons thereby, the instant writ petition was not restored. No application for restoration was placed on record in respect of instant writ petition. The fact narrated in the body of CAN 3 of 2025 appears to me factually correct regarding running both writ petitions analogously. It is further understood that parties to the proceedings though are different, having common interest within same family. The common interest of the parties of both the writ petitions well observed by a co-ordinate Bench of this Court while passing analogous order. When some matters are to be heard analogously, since then both the records should be tagged together and order should be passed together. The orders are made separately that is the reason, the only writ petition being no.22725 of 2013 was only restored. The petitioner has placed reliance upon the learned advocate on record to conduct the case. The petitioner may not be aware about the fact that the restoration has been made only in respect of one writ petition.

Considering the situation, it appears to me that order for restoration in WPA 22725 of 2013 has made ventilate sufficient knowledge to the writ petitioner that both writ petitions were restored on August 25, 2017..

In the present facts and circumstances of the case the explanation given by the petitioners appears to be justified, the petitioner must have confuse after restoration restoration of one writ petition.

Under the above observation, it appears to me that the facts before the Hon'ble Apex Court in **H Gureuswamy & Ors.(supra)** as well as **Rejneesh Kumar & Anr. Vs. Ved Prakash** as discussed by the Hon'ble Supreme Court is different to the present facts and circumstances of the case. There is justifiable reason to hold that the petitioner was confused regarding the restoration of one writ petition being No. WPA 22725 of 2013. Factually when both the writ petitions are running analogously, the order of restoration in respect of one writ petition is sufficient to restore the other, if it is due to default of same set of petitioners.

Considering the same, I find justifiable reasons to entertain the instant application being CAN 3 of 2025, gronds narrated therein are appears to be sufficient. Accordingly, delay in preferring the application being CAN 1 of 2024 is hereby condoned.

Accordingly, CAN 3 of 2025 is disposed.

In Re CAN 1 of 2024

This is an application for restoration. The delay in preferring the said application has already been

condoned by virtue of CAN 3 of 2025. Accordingly, CAN 1 of 2024 is considered and allowed.

The order dated 8.9.2015 passed by the co-ordinate Bench of this Court regarding dismissal of the instant writ petition is hereby recalled.

The writ petition being WPA 13326 of 2002 is hereby restored to its original file and number. The instant writ petition shall run analogously along with writ petition no. WPA 22725 of 2013.

Accordingly, CAN 1 of 2024 is disposed of.

Let the matter appear two weeks after Puja Vacation.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)