(2013) 11 CAL CK 0022

Calcutta High Court

Case No: M.A.T. No. 450 of 2013 and C.A.N. Nos. 3265 and 3266 of 2013

State of West Bengal		APPELLANT
	Vs	
Saidur Rahman		RESPONDENT

Date of Decision: Nov. 26, 2013

Citation: (2014) 2 CHN 603

Hon'ble Judges: Tapash Mookherjee, J; Nadira Patherya, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

1. An appeal has been filed by the State appellants from the order dated 11th April, 2012. From the list of dates it appears that the appeal was filed on 19th March, 2013. Order under appeal was received by the concerned authorities on 17th May, 2012 when a decision was taken to file an appeal. For such purpose the District Inspector of Schools (S.E.) sent the records to the office of the Legal Remembrancer for applying for a certified copy of the order under appeal. The records have been produced and from the records it appears that in the months of June and July, 2012 file was moved from department to department and as pleaded on 1st August, 2012, the papers were made over to the Advocate to file the appeal. For the period 1st August, 2012 till 12th December, 2012 there is no explanation with regard to the steps taken by the office of the concerned authorities to pursue the appeal and from the records produced it appears that a letter was written on 12th December, 2012 by the Directorate of School Education to the District Inspector of Schools, Malda to expedite the steps for filing an appeal. In the event, any step was taken in December, 2012 the seriousness of the appellants to file the appeal could have been understood but the District Inspector of Schools contacted the Advocate in January, 2013 and pleaded that as necessary documents had not been received by Advocate, a further set was made ready and sent. It is not known whether all papers for filing of an appeal was given to the Advocate. There is no receipt either from the Advocate or from his Junior nor is there any communication with regard to receipt of papers.

It has also not been pleaded when the papers were prepared and sent to the Advocate. Whether the papers were at all sent is also not known. It is also not known when the memorandum of appeal was prepared although it has been pleaded that such memorandum of appeal was prepared and the State was advised to bring the original certified copy of the order for which an application was made on 18th February, 2013 i.e. after the contempt application was filed and notice was received by the alleged contemnor/respondent viz. the District Inspector of Schools on 12th February, 2013. There is no explanation why no step was taken by the Legal Remembrancer to apply for a certified copy immediately after a decision was taken to file an appeal. It has been submitted by the Counsel for the appellants that till date the certified copy of the order under appeal has not been received as the file is lying with the contempt proceedings before the Trial Court.

2. This may be true after February, 2013 but prior thereto there was no reason for the appellants not to receive the certified copy of the order under appeal. The seriousness of the appellants to pursue the appeal is in doubt. The seriousness to file the appeal is also lacking. It is only to overcome the threat of contempt that this appeal has been filed, after a delay of 305 days. As no sufficient cause exists for condoning such delay the application for condonation of delay is dismissed.

3. Counsel for the appellants relied on a decision reported in Indian Oil Corporation Ltd. and Others Vs. Subrata Borah Chowlek, etc., which postulates that a liberal view be taken.

4. Such liberal view can only be taken if the officers have made a genuine effort to prefer the appeal. The very fact that an application for certified copy was filed after the contempt proceeding was initiated evidences the lack of seriousness with which the matter was being pursued. It is to the office of the Legal Remembrancer that the intent to file an appeal was presented in May, 2012. The Legal Remembrancer is a legal person but no step was taken to apply for a certified copy. If he did not discharge his duty then it was within the State''s right to take steps against him but no step was taken. Therefore, this is another reason for not entertaining the said application.

5. Another reason for dismissing the application is the decision relied on by Counsel for the respondents viz. Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another, Amlendu Kumar Bera and Others Vs. The State of West Bengal, Union of India (UOI) and Others Vs. Nripen Sarma,

6. Counsel for the appellants submits that on merit the order cannot be sustained but before the merit of the case is considered the appellants will have to cross the hurdle of section 5 of the Limitation Act. As the application for condonation of delay stands dismissed the merit of the order need not be considered. Accordingly, the application for condonation of delay being CAN 3265 of 2013 is dismissed and in view of the said dismissal the appeal and the connected application for stay being

CAN 3266 of 2013 are also dismissed.