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## Keya Kar Vs State Of West Bengal & Ors

**Tender Of Mand Appeal No. 1012 Of 2018, Civil Application No. 9379, 9380 Of 2018**

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**Court:** Calcutta High Court

**Date of Decision:** Dec. 20, 2018

**Acts Referred:**

Limitation Act, 1963 " Section 5

**Hon'ble Judges:** Biswanath Somadder, J; Arindam Mukherjee, J

**Bench:** Division Bench

**Advocate:** Malay Kumar Roy, Raja Saha, Amit Kumar Ghosh, Srijan Nayak, Rituparna Maitra

**Final Decision:** Dismissed

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### Judgement

Biswanath Somadder, J.

This is an application under section 5 of the Limitation Act.

Having heard the learned advocates for the parties and upon perusing the application for condonation of delay, it appears that sufficient cause has

been shown by the applicant to explain the delay in filing of the appeal. As such, the delay is condoned. The application for condonation of delay is

accordingly allowed.

In Re: CAN 9379 of 2018 with MAT 1012 of 2018

By consent of the parties, the appeal is treated as on day "s list and taken up for consideration along with the application for appropriate order.

The instant appeal arises out of a judgment and order dated 19th July, 2018, passed by a learned Single Judge in W. P. 23478 (W) of 2017 (Smt. Keya

Kar vs. The State of West Bengal & Ors.).

The appeal has been preferred by the writ petitioner. The facts of the case " as presented before the learned Single Judge " are as follows:-

"The appellant/writ petitioner was dismissed from service on 3rd August, 2016. The substance of the charges against the appellant/writ petitioner

are as follows:-

(i) that in spite of being ordered by him on 29/06/2015 and 29/09/2015 to complete all pending works in the Share Section Smt. Keya Kar, Clerk, has

not done the job allotted to her, (ii) that through resolution of the Special Officer dated, 21/01/2015, it was notified to all the employees of the society

that "Leave petition of all the employees shall be placed before the Special Officer for his prior intimation and approval, (iii) On 24/04/2015, the

Special Officer asked the Secretary to call for explanation from Smt. Keya Kar, Clerk, regarding unauthorised absence from office and tampering the

Attendance Register of the society (Photocopy annexed herewith and marked as A-6), (iv) that Smt. Keya Kar, Clerk, has remained absent

frequently but she has neither given even any prior intimation nor has she produced any medical documents and hence the Secretary had denied

signing her Joining Reports, (v) that some members have verbally reported him about the misbehaviour of Smt. Keya Kar, Clerk, and some members

have even submitted written complaints against Smt. Keya Kar, Clerk (Photocopy annexed herewith and marked as A-7), (vi) that 30 employees of

the society had lodged complaints before the Special Officer on 27/09/2014 against Smt. Keya Kar, Clerk, seeking the intervention of the Special

Officer (Photocopy annexed herewith and marked as A-8).

The learned Single Judge has taken note of all facts including the fact that although the appellant/writ petitioner was given notice of personal hearing

on 5th May, 2016, she did not appear before the Manager of the concerned Society on that date. The hearing was, therefore, adjourned but the

appellant/writ petitioner did not appear even on 12th May, 2016 to put forth her views with regard to the charges levelled against her and also the

version of the witnesses- in-question. The learned Single Judge also took note that a large number of documents relied upon in the enquiry were also

supplied to the appellant/writ petitioner. The learned Single Judge, thereafter, proceeded to take note of the relevant rules of the Co-operative

Societies Rules as also the grounds for challenging the proceedings initiated against the appellant/writ petitioner. After considering all aspects of the

matter, the learned Single Judge proceeded to dismiss the writ petition while making the following observations:-

"In the aforesaid circumstances, I do not find that there is violation of principles of natural justice or the Rules in question. The punishment imposed

is commensurate with the charges proved against the petitioner. In fact most of the charges have not been seriously contested or converted by the

writ petitioner. She was afforded due opportunity to defend herself in the enquiry. No specific prejudice has even otherwise been shown by the

petitioner in the conduct of the enquiry.

Hence, I find no reason to interfere with the impugned order passed. W. P. No.23478 (W) of 2017 stands dismissed.

At the time of hearing of the appeal, it has been pointed out by the learned advocate for the appellant/writ petitioner that there are certain facts which

have been incorrectly recorded in the impugned judgment and order.

According to the learned advocate for the appellant, the appellant/writ petitioner had, in fact, appeared on 12th May, 2016 to put forth her views with

regard to the charges levelled against her and also the version of the witnesses in question, although the learned Single Judge in the impugned order

has recorded to the contrary. He also submits that a number of documents which were relied upon in the enquiry were not supplied to the

appellant/writ petitioner, although the learned Single Judge has recorded otherwise.

In such circumstances as stated above, we are of the view that the appellant/writ petitioner ought to have approached the learned Single Judge

bringing the factual inconsistencies to the Court's notice instead of preferring an Intra-Court Mandamus Appeal.

The appeal and the application for appropriate order are liable to be dismissed and are accordingly dismissed subject to the observation made

hereinabove.