07.10.2026
Court No. 12
ML 17
Sandip

MAT 1696 of 2026
With
CAN 1 of 2026

Achintya Giri & Ors.
Vs.
State of West Bengal & Ors.

Mr. Subir Sanyal, Sr. Adv.,
Mr. Tarapada Das
...for the Appellants.

1. Despite service, none appears for the respondents.
2. The learned single Judge refused to restore the writ petition which was dismissed for default on August 8, 2024.
3. The application for condonation of delay in filing the restoration application was also dismissed. His Lordship held that the learned advocate had made an incorrect statement that the erstwhile advocate had expired during the Covid pandemic, but actually the learned advocate expired in January 2022.
4. The writ petition was dismissed for default on August 8, 2024.
5. CAN 3 of 2025, which was filed before His Lordship is an application for restoration and recalling of the order of dismissal. CAN 4 of 2025 is an application for condonation of delay in filing the restoration application.

6. The restoration application was filed after a period of 307 days. In paragraph 5 of the said application it has been stated that the writ petition appeared under the heading old matters before a learned single Judge. During the pendency of the writ petition there was a change of advocate. The advocate who was engaged later, failed to file his Vakalatnama. He expired on February 17, 2022. When the appellants did not receive any instruction from the learned advocate, he sought to make a query. He also got information that the advocate expired on February 17, 2022. Upon perusing the status report in the website, the appellants came to know that the writ petition was dismissed for default on August 8, 2024. The status report was obtained on June 5, 2025. As the appellants had remained in the dark with regard to the fate of the said writ petition and also had not heard from the learned advocate, we are of the view that the appellants cannot be made to suffer for inaction of the learned Advocate and especially as the learned Advocate had expired.

7. In our view, the nature of date of death of the learned advocate is irrelevant as the writ petition was dismissed for default in 2024.

8. We deem it fit to delineate the chain of events.

9. The writ petition was filed in 2001. A learned advocate was acting on behalf of the appellants. Thereafter a change was obtained sometime 2014. The learned advocate who was engaged in 2014 failed to file his Vakalatnama and he did not take steps with regard to

hearing of the writ petition. He passed away during the Covid pandemic that is on February 17, 2022 and as per the decision of the Hon'ble Apex Court the period between March 15, 2020 to February 28, 2022 should be excluded for the purpose of calculation of limitation in respect of any proceeding. Thus, according to the Hon'ble Apex Court, the covid period started from March 15, 2020 and ended on February 28, 2022. Although the demise of the learned advocate in 2022 February is of no significance, the appellants were not aware of the death of the learned advocate. The fact that he could not take steps because he was no more in the world, was not known to the appellants. The appellants got anxious only when they did not hear from the learned advocate for a long time. Ultimately, they made an enquiry and obtained a status report sometime in June 2026. They came to know for the first time that the writ petition appeared under the heading old matters and was dismissed for default by a learned single Judge. They filed an application for restoration, praying for condonation of delay of 307 days.

10. We have perused the explanations in both the applications for condonation of delay and the restoration application and we are satisfied that the delay in filing of the restoration application has been sufficiently explained. The appellants were not represented before the learned Court, who dismissed the writ petition. They were not aware that the learned advocate had passed

away. They had not received any information with regard to the listing of the writ petition.

11. Under such circumstances, the order impugned is set aside. CAN 3 of 2025 and CAN 4 of 2025 which have been filed before His Lordship are allowed. The writ petition is restored to its original file and number. The writ petition shall be heard on its own merit. We are of the view that, His Lordship was not properly apprised of the situation and the facts could not be brought to the knowledge of His Lordship.

12. Accordingly, the appeal and the application are disposed of.

13. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)

(Arjun Ray Mukherjee, J.)