

18.07.12Hon'ble Mr.D.C. Lakha, Member (A)

Shri Krishna Srivastava proxy counsel for Shri S. Dixit, learned counsel for the applicant and Shri Saurabh for respondents on the restoration application No. 3692/2011 praying for recall of the order dated 31.5.2011. The point of limitation in filing this application is raised by the learned counsel for the respondents. He has stated that O.A. was dismissed first on 13.1.2006, thereafter restoration application was moved, but none pursued the matter on behalf of the applicant and the same was dismissed on 2.12.2008 again. On revival of the O.A. thereafter, it was dismissed in default on 31.7.2009 and again restoration application was dismissed in default on 8.2.2010. Thereafter, the O.A. was restored. Counter reply was already filed. The learned counsel for the applicant has been taking time to file Rejoinder, the last date for this purpose being 25.10.2010 on which date, 3 weeks' time was sought to file Rejoinder Affidavit. But, thereafter it was listed on 14.2.2011, 24.2.2011, 19.4.2011, 21.4.2011 and 30.1.2012. When, consecutively on 5 dates, none was appearing for the applicant it was dismissed in default on 31.5.2011, for the recall of which the present restoration application is submitted.

The learned proxy counsel for the applicant has stated that the applicant could not know about the date and about the order dated 31.5.2011 and he could get the information on 20.9.2011, then he applied for the certified copy of the order which was provided on 31.10.2011 and thereafter, present restoration application has been moved. This is a stereo type explanation which seems to be a cover up story on behalf of the applicant. No man with [✓] common prudence can believe that the applicant whose case is under consideration in the court could not know about the date and he was not appearing at all. Not even the Counsel was appearing and on 31.5.2011, the O.A. was dismissed



in default and restoration application has been filed. Looking to the antecedents of this case, it is crystal clear that the applicant is not at all interested to follow up his case, that is why it is being dismissed in default for more than one occasion.

In view of the circumstances and the reasons, I am convinced that the restoration application is devoid of merit. No plausible reason has been given for delay. Hence the Restoration application is dismissed.


Member (A)

s.a./