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R E S E R V E D

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD.

Registration T.A.No.1456 of 1986 (C.M.Application No.23 of 1984)

Union of India Applicant
Vs,
Shyam Mohan Respondent.

Hon.D.S.Misra,AM
Hon.G.S.Sharma,JM

(By Hon. G.S.Sharma-JM)

This application under Order XLI Rule 19 of the Code of Civil Procedure has been received by transfer under Section 29 of the Administrative Tribunals Act XIII of 1985 from the Court of Special Judge/Additional District Judge Mathura.

2. The relevant facts of this case are that the respondent had filed suit no.366 of 1978 in the Court of Munsif Mathura against the applicant in connection with some service matters. The suit was contested by the applicant and one Sri S.P.Chaudhary was engaged as counsel on behalf of the applicant by executing a vakalatnama in his favour. The said suit was decreed on 2.11.1981. Against the decree passed against the applicant Sri S.P.Chaudhary filed Civil Appeal No.211 of 1981 in the Court of District Judge, Mathura. It appears that during the pendency of the appeal, the railway counsel at Mathura was changed and one Sri J.D.Jain was appointed as railway counsel in place of Sri Chaudhary. On 24.2.1984 as none appeared on

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behalf of the applicant before the appellate Judge, the appeal was dismissed in its default. For the restoration of the said appeal the present application was moved by Sri J.D.Jain on 24.3.1984 with the allegation that on account of cold caught by him he was not in a fit state of health on 22.2.1984 and 23.2.1984 and on 24.2.1984 he became late in coming to Court for his going to consult his Physician and by the time he returned to the Court, his appeal was dismissed in default. The respondent filed an objection supported by an affidavit against that application stating that Sri J.D.Jain was not an Advocate for the applicant and was not entitled to conduct the appeal or move the restoration application. It was also alleged that Sri Jain was neither ill nor had come to the Court late but was very much present in the Court when the appeal was called on but he declined to appear and stated before the Court that this appeal was neither entrusted to him nor any vakalatnama was received in respect thereof.

3. At the time of arguments before us this application was opposed on behalf of the respondent on the ground that Sri J.D.Jain had no authority to move an application for restoration of appeal in the absence of vakalatnama in his favour and as such the application is not maintainable and should be rejected. On a perusal of the record, we found that a vakalatnama was duly executed in favour of Sri J.D.Jain on 9.1.1985 for appearing on behalf of the applicant in this appeal. The only point to be seen, therefore, is whether this vakalatnama

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could ^{ensure to} ~~know with~~ the benefit of the applicant.

4. No case law was cited before us on behalf of any party. We have carefully considered over the controversy arising in this case and have come to the conclusion that the defect of the presentation of the present application by Sri J.D.Jain without a vakalatnama in his favour was a curable defect and the application cannot be rejected merely on this ground. In State of M.P. Vs. Yatendra Prasad (A.I.R. 1963 M.P.-127) it was held that in case an appeal is presented by a pleader without a vakalatnama the defect can be cured by filing the vakalatnama even at a late stage. In Shiv Narain Vs. Deputy Director (C) (A.I.R. 1959 Allahabad-487) it was held that physical act of presentation is not of much importance and defective presentation of an appeal or plaint is at the most an irregularity, which is easily curable. In Nadella Satyanarayana Vs. Yamanoori Venkata Subbiah (A.I.R. 1957 A.P. 175 (F.B.)) it was held that the presentation of an application by a pleader to whom the authority in the prescribed manner under order III Rule 4 CPC was not given is only an irregularity which can be cured at a subsequent stage. To the same effect is the decision of the Hon. Supreme Court in Shastri Yagna Purushdasji Vs. Muldas Dhundar Das (A.I.R. 1966 S.C.-1119) in which the vakalatnama was executed in favour of Government Pleader but the appeal in the High Court was preferred by the Assistant Government Pleader working in the same office. The irregularity was not noticed by the Registry and the appeal was duly admitted for hearing. It was held that memorandum of appeal though technically irregular, no party can suffer for mistake of Court or its office and that High Court was right in allowing the Government Pleader to sign the vakalatnama and appeal later on.

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5. At the time the present application was presented before the appellate Court, the office of the Court did not notice the defect that Sri J.D.Jain was not a duly authorised Advocate to present such application on behalf of the applicant. When such defect came to the notice of the Court and the applicant, the defect was removed by executing the vakalatnama in favour of Sri Jain and placing the same on record. In our opinion, this cured the defect in the presentation of the restoration application in view of the case laws discussed above. Regarding the facts of the case, we are of the view that the contention of Sri J.D.Jain, a respectful member of the Bar has to be believed in comparison to an affidavit of interested person, the respondent. In case Sri Jain could refuse to get his presence noted at the time the appeal was taken up by the appellate Court on 24.2.1984 on the ground that he had no vakalatnama in his favour, he could not present the restoration application without getting the vakalatnama in his favour. We are, therefore, inclined to believe the explanation of his non-appearance at the time the appeal was taken up and hold that there was sufficient ground for non-appearance in this case.

6. The application is accordingly allowed and the appeal is restored to its original number. It should now be registered as separate Transferred Application and listed for hearing after due notice to the parties.

[Signature]
13.8.87
MEMBER (A)

DATED AUG. 13, 1987
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[Signature]
13/8/87
MEMBER(J)