

20-09-2002

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O.A.1563/94

Hon'ble Maj Gen K K Srivastava, Member (A)


Shri H. K. Mishra, learned counsel for the applicant. M.A.3924 of 2001 is for recalling the order dated 11.02.2000, by which the M.A. (Restoration Application) No.2551/99 was rejected. The O.A. was dismissed in default on 11.02.1995. The applicant filed restoration application No.2551/99 on 03.06.99. When restoration application No.2551/99 was listed for consideration on 11.02.2000 none appeared and the M.A. was rejected. The present restoration application No.3924/01 has been filed on 30.08,2001. In para-5 of the said Misc. Application the learned counsel has himself mentioned as under:-

"That the restoration application has been filed on 03.06.99. The case was listed so many times on the restoration application. Due to heavy work the case was not taken up, therefore, the application for restoration was kept pending. Again the case was listed on 11.02.2000. On the aforesaid date 11.02.2000 the counsel for the applicant was unaware, was ill on 11.02.2000 due to fever, therefore, he had sent the illness through his clerk."

I am ^{was} not inclined to accept this plea because if the learned counsel ^{was} ill he should have sent illness slip. In absence of the same the restoration application was dismissed in default by order dated 11.02.2000. The learned counsel for the applicant himself admits that the case was listed for so many times but could not be taken up due to heavy work. The case was listed on 02.07.95 and 24.12.99 and as per orders none was present for the applicant. Therefore, the M.A.2551/99 was rejected on 11.02.2000.

I would also like to observe that the case was dismissed in default on 11.02.95, ^{by} the applicant slept over the matter for more than 4 years and then filed the restoration application No.2551/99 and again when the M.A.No.2551/99 was rejected on 11.02.2000, the ^{he} applicant ^{he} slept for more than one and a half years. He has filed the present restoration application No. 3924/01 for consideration which is liable to be rejected on the ground of limitation.

In view of the aforesaid, the restoration application No.3924/01 is rejected being grossly time-barred.


Member (A)

shukla/-