

10.4.2017

Hon'ble Mr. Justice Dinesh Gupta, JM
Hon'ble Ms. Nita Chowdhury, AM

Heard learned counsel for applicant Sri S.K.Dwivedi and learned Counsel for respondents Sri Rajesh Kumar Tiwari on Civil Misc. Delay Condonation Application No. 4983/2016 and Restoration Application No. 4984/2016 in O.A. No. 1017/2006.

2. This Restoration application is preferred to recall the order dated 18.4.2016 passed in restoration application dated 15.10.2015 and order dated 25.8.2015 passed in restoration application dated 18.8.2015 and also for recalling the order dated 29.3.2007.

3. The applicant in the affidavit annexed with the application stated that the present O.A. was filed by the applicant in 2006 but due to inadvertent mistake, the counsel for the applicant could not approach the Tribunal and the O.A. was dismissed for non-prosecution on 29.3.2007. The applicant filed a restoration application in the year 2015 to restore the order dated 29.3.2007. The case was listed on 25.8.2015 but the counsel could not appear before the Tribunal and the restoration application dated 18.8.2015 was also dismissed in default for want of prosecution. Thereafter, the applicant again filed a restoration application dated 15.10.2015 to restore the order dated 25.8.2015 and the same was listed on 18.4.2016 but the counsel for applicant could not appear before the Tribunal on that date and the restoration application dated 15.10.2015 was again dismissed for want of prosecution.

4. After filing the restoration application dated 15.10.2015, the Counsel for the applicant Sri Satish Kumar Dwivedi became seriously ill and he could not appear before this Tribunal on 18.4.2016. The counsel for the applicant was hospitalized as there was some problem in his lungs and after getting cured, when he approached the Tribunal, then it came to his knowledge that vide order dated 18.4.2016, the case has been dismissed in default.

5. This O.A. has chequered history. Initially the O.A. was preferred in 2006 bearing O.A. No. 1017/2006 and since this case is defective and time barred, Diary No. 936/2006 was allotted to the same. The O.A. was filed on 22.8.2006 and the same was dismissed in default on 10.10.2006. The applicant

filed Restoration Application No. 4297/2006 seeking restoration of O.A. which was dismissed in default on 10.10.2006 as no body was present to press this M.R and again the said M.R was dismissed in default vide order dated 29.3.2007. Thereafter, the applicant filed an application No. 2454/2007 for restoration of his application which was dismissed in default on 29.3.2007. However, no body was present to press the M.R. No. 2454/2007 hence this application was again dismissed in default on 10.12.2007.

6. Thereafter, a delay condonation application along with restoration application is filed in 2015 and said application was also dismissed vide order dated 25.8.2015. Thereafter, again a Misc. Application for restoration along with delay condonation application is preferred and the same was also dismissed on 18.4.2016 and now the present restoration application.

7. From the above facts, it is clear that from the day one of filing of O.A. with delay condonation application, the applicant was totally negligent in pursuing this matter and the case was repeatedly dismissed and after 2007, an application for restoration was moved in 2015 without specifying any reason for not moving restoration application earlier. The said application was again dismissed and another application for restoration of that application was also dismissed on 18.4.2016.

8. It has also been brought to the notice of this Tribunal that when the petition was dismissed in default in 2007 and when no restoration application was filed till 2015, as per procedure, the O.A. was also weeded out after expiry of five years.

9. In view of the above facts and circumstances, the restoration application is hopelessly barred by limitation and full of laches and applicant has failed to demonstrate before the Tribunal any reasonable ground for delay. Accordingly, delay condonation application and restoration application are liable to be rejected. Both applications are rejected.

W
Member (A)

HLS/-

W
Member (J)