

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**M.A. No.100/1975/2016 In
O.A. No.100/3321/2011**

New Delhi this the 3rd day of November, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. P.K. BASU, MEMBER (A)**

Mrs. Gian Devi
Aged about 60 years
W/o Shri Anil Behal
R/o 70-A, Gali No.4,
Gian Park (East), Chander Nagar,
Delhi-110051. . Applicant

(Argued by: Shri Devi Krishan, Advocate)

Versus

1. Delhi Development Authority
Through its Vice Chairman,
Vikas Sadan, INA, New Delhi.
2. Vice Chairman,
Delhi Development Authority
Vikas Sadan, INA, New Delhi.
3. Finance Member,
Delhi Development Authority,
Vikas Sadan, INA, New Delhi.
4. Commissioner (P)
Delhi Development Authority,
Vikas Sadan, INA,
New Delhi. ..Respondents

(By Advocate: Shri Manjeet Singh Reen)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The contour of the facts and material, relevant for deciding the core controversy involved in the instant Miscellaneous Application (MA) for restoration of the case, is

that the main Original Application (OA), bearing No.3321/2011 filed by the applicant, Gian Devi, was dismissed for default by a Coordinate Bench of this Tribunal, vide order dated 11.05.2016. The order reads as under:-

“Prayer for adjournment on behalf of learned counsel for the applicant is made. We note that on 27.07.2015, 06.10.2015, 10.12.2015, 23.02.2016 and 05.04.2016 the applicant had sought adjournment through proxy counsel. The same position is also today. Learned counsel for the applicant represented through proxy counsel is seeking adjournment. It is clear that the applicant is no longer interested in pursuing the matter. Therefore, the OA is dismissed in default for non-prosecution.

2. Now the applicant has preferred the present MA for restoration of the OA, mainly on the ground that her proxy counsel had earlier prayed for adjournment because the main arguing counsel was unable to attend the proceeding as he was out of town on 11.05.2016 when the case was dismissed in default. She has engaged another counsel in the absence of main arguing counsel. It was alleged that she has claimed the service benefits along with retiral benefits and in case the main OA is not restored, she would suffer irreparable loss. According to the applicant, the absence of her counsel on 11.05.2016, was not intentional but bona fide and beyond her control. On the basis of aforesaid grounds, she seeks the restoration of the main OA.

3. The respondents have not filed the reply despite notice and adequate opportunities.

4. After hearing the learned counsel for the parties, going through the record with their valuable help, we are of the considered view that the present MA deserves to be accepted.

5. As indicated hereinabove, the applicant has pleaded that her counsel could not appear on 11.05.2016, when the OA was dismissed in default as he was out of station. The absence of counsel for the indicated reason, to our mind, is sufficient ground to accept the prayer of the applicant, particularly when it is now well settled principle of law, that indeed a person should not be allowed to suffer on account of negligence and inaction of her counsel. Moreover, the lis between the parties should be decided on merits. The respondents have not controverted the grounds pleaded by the applicant in the MA, as no reply has been filed despite notice and adequate opportunities to them. Meaning thereby, the respondents have admitted the grounds pleaded in the MA by the applicant.

6. In the light of the aforesaid reasons and taking into consideration the nature of the relief claimed by the applicant, a poor old lady, and the sufficient pleaded grounds, the MA is allowed. The order dated 11.05.2016 of this Tribunal is recalled and the OA is ordered to be restored to its original number. However, taking into consideration the repeated faults mentioned in the order dated 11.05.2016 on the part of the

applicant, the MA is allowed subject to payment of Rs.2000/- as cost to be paid by her to the CAT Bar Association.

(P.K. BASU)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
03.11.2016

Rakesh