

GAHC010074292024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MC/28/2024

DULAGRAM TEA LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT
1956 HAVING ITS REGISTERED OFFICE AT 3B
LALBAZAR STREET
KOLKATA-700001
REPRESENTED BY ITS CONSTITUTED ATTORNEY SRI CHANDR PRAKASH
AGARWALA

VERSUS

THE COLLECTOR
CACHAR
SILCHAR
ASSAM

Advocate for : MR. J KALITA
Advocate for : GA
ASSAM appearing for THE COLLECTOR
CACHAR

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

26.04.2024

Heard Mr. J. Kalita, learned counsel for the petitioner. Also heard Mr. T. R. Gogoi, learned Government Advocate for the State respondent.

2. This is an application filed under Order IX, Rule 9 of the Code of Civil Procedure, praying for restoration of the appeal bearing L. A. Appeal No.09/2022 to the original file, which has been dismissed for non-prosecution vide order dated 26.02.2024.

3. It is submitted by the learned counsel for the petitioner, Mr. Kalita that the petitioner as an appellant had preferred a land acquisition appeal before this Court, which was registered as L.A. Appeal No.09/2022 praying for setting aside the impugned order dated 09.11.2021 passed by the Court of learned Additional District Judge (FTC), Cachar, Silchar, Assam in Misc.(Land Acquisition) Case No.02/2012, but, the said appeal was dismissed for non-prosecution vide order dated 26.02.2024.

4. He also submitted that initially the appeal was conducted by the advocate Mr. A. Sarma, however, due to some problem faced by the appellant's company, the petitioner engaged the present counsel to lead the case. During the proceeding, the L.A. Appeal No.09/2022 was dismissed for non-prosecution, and accordingly, the newly engaged counsel filed the interlocutory application being numbered as I.A.(C) Case No.3609/2022 for restoration of the said L.A. Appeal No.09/2022 and further, this Court was pleased to allow the said interlocutory application and the appeal i.e. the L.A. Appeal No.9/2022 was restored to its original file. After restoration of the said appeal, the appellant was pursuing the

case with the newly engaged counsel. But, when the matter was not listed for hearing, on 27.02.2024, the present petitioner/appellant as an applicant filed an application under Section 151 of CPC for early disposal of the case. But, despite of filing such application, the matter was not listed, and when the petitioner inquired in the Registry that as to why the matter has not been listed, then, he was informed by the Registry that the matter has already been disposed of on 26.02.2024 for non-prosecution. Thereafter, the engaged counsel had gone through the cause list dated 26.02.2024, and he found that his name was not shown in the cause list and for which, the said counsel as well as the petitioner/appellant was not aware that the case was fixed on 26.02.2024 and the same was dismissed for non prosecution.

5. He further submitted that in the cause list of 26.02.2024, the L.A. Appeal No.09/2022 was shown in the item No.10 of the list, wherein, the name of the advocate, Mr. A. Sarma was reflected who had already withdrawn himself from the case and the names of the newly engaged counsel was not mentioned in the list. The appellant and his engaged counsel was not aware about fixing of the case on 26.02.2024, though the application was filed for early disposal by the applicant/present petitioner. Further it is submitted by the learned counsel for the petitioner that there is no deliberate negligence on the part for non-representation of this case and the engaged counsel could not appear on 26.02.2024 as the name was not shown in the cause list of 26.02.2024. He also submits that the appeal involves the question of huge amount of money of the petitioner's company and therefore, it is very much necessary to decide the case on merit and if, the petition is not restored to file, then, the petitioner will suffer a huge loss of money. Accordingly, the present petition has been filed for restoration of the L.A. Appeal No.09/2022 which was dismissed vide order dated

26.02.2024 for non-prosecution. In support of his submission, he also annexed the application filed before this Court for early disposal of this case as well the cause list of 26.02.2024.

6. On the other hand, Mr. Gogoi, learned Government Advocate has submitted that this is the second occasion when the case has been dismissed for default/non-representation. More so, there was a delay of 7 days in instituting the present application and hence, he raised objection and submitted that it is not a fit case to restore the L.A. Appeal No.09/2022 which was dismissed for default on 26.02.2024.

7. In this regard, Mr. Kalita, learned counsel for the petitioner has submitted that he applied for the certified copy on 20.03.2024 and the same was provided only on 01.04.2024 and the office took 11 days for supplying the certified copy and thus, there was a delay in filling the petition. More so, the petition has been admitted after verification by the officer of the Registry.

8. After considering the submissions made by the learned counsels for both sides, I have perused the case record as well as the annexure appended along with the petition. It is seen that the matter was fixed on 26.02.2024, wherein the name of the advocate Mr. A. Sharma was reflected for representing the appellant, though he has already withdrawn himself from contesting the said appeal and the name of the newly engaged counsel was not reflected in the cause list. It is also seen that the newly engaged counsel had filed an application for early hearing of the present appeal.

9. Thus, considering the entire aspect of the case, I find it proper and justified to allow the present application for restoration of the L.A. Appeal No.09/2022

which was dismissed for non-prosecution. And, accordingly, the impugned order dated 26.02.2024 passed in the L.A. Appeal No.09/2022 is set aside and quashed with a direction to restore the said appeal in its original file.

10. In terms of above, this interlocutory application stands disposed of.

11. In the meantime, the Registry is hereby directed to restore the L.A. Appeal No.09/2022 to its original file and list the matter after **3(three) weeks**.

JUDGE

Comparing Assistant