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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 241 OF 2014
IN
CRIMINAL MISC. APPLICATION NO. 135 OF 2014

SYNDICATE BANK, REP. BY ITS SR.
BR. MANAGER MR. ARUN J. LIKHITE Applicant

V e r s u s

MR. KRISHNAKUMAR PADMUKHE AND ANR.... Respondents

Mr. V. Ajay Kumar, Advocate for the applicant.

Respondents absent though served.

CORAM : K. L. WADANE, J

ORDER RESERVED ON : 27.02.2015

ORDER PRONOUNCED ON : 12.03.2015

P.C:

This application is filed by the original complainant for restoration of application seeking leave to appeal which was dismissed for default on 10.09.2014. According to the applicant, the Advocate of the applicant received a mail from the Registry of this Court that the subject matter is likely to be taken up on 10.09.2014. Accordingly, a note was taken in the diary. On

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10.09.2014 the Advocate of the complainant was present in the Court and while perusing the Court cause list at about 12.15 p.m., Advocate for the applicant realised that the Court would take up the matters under Serial nos. 1 to 40 listed under 'Admissions and orders" on Wednesday and the matters under Serial Nos. 41 onwards under 'Admissions and Orders" would be taken up on Thursday and hence the counsel for the applicant left the Court room. On 11.09.2014 the counsel for the applicant's junior was present in the Court room and at about 1.35 p.m. when inquired with the Court Officer whether the subject matter would be taken up after lunch, at that time it was informed that the subject matter was disposed of on 10.09.2014. According to the applicant, upon verification of the orders on online in respect of the aforesaid case, the counsel for the applicant realised that the subject matter was listed on 03.09.2014 and since none was present, the same was listed on 10.09.2014 for dismissal and on 10.09.2014 it was dismissed. According to the applicant, the act on the part of the Advocate was not willful but was of a mis-communication. The absence of the Advocate of the applicant when the matter was called out was not deliberate but occurred bonafide and in the circumstances on account of a genuine error/ mis-communication, the application for restoration seeking leave to appeal needs to be granted. The grounds stated in the restoration application appear

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to be bonafide. The respondent no.1 though served with the notice remained absent and no reply has been filed. Therefore, the contentions raised in the present application remained unchallenged. Therefore, the application is liable to be allowed. Hence, it is allowed. Criminal Misc. Application No. 135 of 2014 is restored to the file.

K. L. WADANE, J

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