

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO.37 OF 2015
IN MISC. CIVIL APPLICATION ST. NO. 24688 OF 2014
IN WRIT PETITION NO.2857 OF 2001

(Shri Dwijendra Nath Sen vs. The Chairman-cum-Managing Director, Manganese Ore (India) Ltd. and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Ms. K.K. Pathak, Advocate for applicant.
Shri G.G. Modak, Advocate for respondent no.1.

CORAM : B.P. DHARMADHIKARI AND
 P.N. DESHMUKH, JJ.

DATED : AUGUST 19, 2015

With consent of learned Counsel for the parties, civil application as also miscellaneous civil application are taken up for hearing.

In Writ Petition No.2857/2001 filed by applicant, challenge is to his dismissal after enquiry. The petition was admitted for final hearing. It has been dismissed in default on 14/10/2009 as nobody appeared for applicant.

The learned Counsel for applicant states

that a Counsel was already engaged by the applicant and as that Counsel failed to mark the matter in the cause list, there was no appearance. As there was no appearance, dismissal of petition in default also came to knowledge belatedly. It is, therefore, submitted that there is delay of 5 years and 33 days. The request is to condone the delay and to recall order dated 14/10/2009 passed by this Court and to restore Writ Petition No.2857/2001 to file for its consideration on merits.

Adv. Modak for respondent no.1 is strongly opposing the prayer for condonation of delay as also restoration of writ petition. He submits that in 2001, dismissal of applicant had been ordered in accordance with law and thereafter all benefits have been computed and paid to applicant. The applicant was negligent in attending the matter and hence, there is delay. He also points out that in the meantime, applicant has crossed the age of superannuation and hence, reliefs sought for in the writ petition cannot be given.

Crossing of age of superannuation is a subsequent issue and it may have some bearing on

question of moulding of reliefs when challenge in Writ Petition No.2857/2001 is considered on merits. Prima facie it appears that the said petition was admitted for final hearing because Court found some substance in the petition.

The fact is that applicant had engaged Counsel to prosecute the matter and the Counsel could not appear on 14/10/2009 when petition was dismissed for want of prosecution. The applicant cannot be blamed for this. As dismissal of petition for want of prosecution has been learnt belatedly, application for restoration of petition has been filed after 5 years and 33 days.

As we do not see any malafides, we condone the delay. Office to register Miscellaneous Civil Application.

For the same reasons, we also grant prayer in Miscellaneous Civil Application and recall order dated 14/10/2009 passed by this Court. Accordingly, Writ Petition No.2857/2001 is restored back to file for its hearing on merits.

Adv. Modak waives notice for respondent no.1 in Writ Petition No.2857/2001 after its

restoration.

Issue notice to other respondents in
restored Writ Petition No.2857/2001, returnable on
12/10/2015.

JUDGE

JUDGE

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