

\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4889/2007

%

Order dated 13th August, 2015

UOI & ORS

..... Petitioners

Through : Mr. Rajeev Sharma with Ms.
Radhalakshmi R. Advocates

versus

SAVITA KHERA & ORS.

..... Respondents

Through : None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

%

13.08.2015

G.S.SISTANI, J (ORAL)

CM.APPL 12749/2015(restoration of writ petition), CM.APPL 12750/2015(delay in filing restoration application) & CM.APPL 12751/2015(delay in re-filing)

1. Three applications are listed for hearing today. The first application being CM.APPL 12749/2015 is an application seeking restoration of the writ petition which was dismissed on 03.08.2009 for non-appearance and non-prosecution. CM.APPL 12750/2015 has been filed seeking condonation of delay in filing the restoration application and the third application CM.APPL 12751/2015 has been filed seeking condonation of delay in re-filing the aforesaid two applications.
2. Courts have always followed a very liberal approach while dealing with an application for restoration only with a rider that in case the applicant is able to satisfy the Court that he was prevented from appearing on account of a

sufficient cause, provided the application is *bona fide*, the non-appearance is not on account of inaction or carelessness. The present application being CM.APPL 12749/2015 seeking restoration of the writ petition discloses a very sad state of affairs. Since the application is rather short and the grounds for non-appearance find mention in paras 5 and 6 of this application, we deem it appropriate to reproduce the said paragraphs:

- “ 5. However, it seems that the counsel for the petitioners did not even file process fee, as a result whereof the matter was dismissed for non-prosecution vide an order dated 03.08.2009.
6. That for the quite some time the counsel for the petitioners did not even inform them about the dismissal of the writ petition. Ultimately the petitioners got knowledge of the same. The counsel gave an opinion that no purpose would be served in seeking restoration of the same. The matter was then processed administratively and a decision was taken to seek restoration of the writ petition, more so, in view of the huge financial consequences involved in the matter.”
3. On reading of the application, we find that there is not even a whisper in the entire application as to what prevented the counsel from appearing in Court when the matter was listed on 03.08.2009. To seek restoration, besides giving sufficient reasons or cogent reasons, there should have been some mention as to why the counsel did not appear or why no steps were taken to serve the respondents. The application is devoid of any material particulars. Neither any affidavit of the counsel nor the affidavit of the concerned officer who was dealing with the matter has been filed. The petitioner before us is not a private individual but the Union of India which has a large Law Department. The lethargy of the petitioner is writ large on the face of the record as there is delay of 93 days in re-filing the application

which would give an idea that the petitioner was not in any hurry to have the matter restored.

4. We may also note that in this writ petition, notice was issued on 09.07.2007, thereafter matter was listed on 14.11.2007, 25.03.2008, 24.09.2008, 07.01.2009, 08.04.2009 and 03.08.2009, however, no steps were taken to serve the respondents.
5. On 03.08.2009, it was noticed that neither the steps were taken nor anyone appeared on behalf of the petitioners and following order was passed:

“On 8th April, 2009, it was noted that after issuing of notice in the matter on 9th July, 2007, the petitioner has not filed the process fee at all for service of notice upon the Respondents. Two years have gone by in this process. It was made clear on 8th April, 2008 that if no steps are taken for service upon the respondents, the writ petition is liable to be dismissed for non-prosecution.

The office report is that the process fee has not been filed.

Dismissed for non-prosecution.”

6. In the absence of any ground stated in the application for restoration for non-appearance and why no steps were taken for two years to serve the respondents, we are unable to entertain the present application.
7. All applications are dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 13, 2015 gr/pst