

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

Misc. Civil Application (Restoration) No.916 of 2016

In

Writ Petition No.1854 of 2008 (Decided)

(Shri Anuj Mataprasad Singh Bains v. State of Maharashtra, through
Secretary, Department of State Excise, Mantralaya, Mumbai, and others)

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

Shri Shyam Dewani, Advocate for Applicant/Petitioner.

Ms N.P. Mehta, Assistant Government Pleader for Respondent
Nos.1 to 4.

Shri Prasad Dharaskar, Advocate, holding for Shri Anand
Parchure, Advocate for Respondent No.5.

Coram : R.K. Deshpande, J.

Dated : 2nd December, 2016

Heard the learned counsels appearing for the parties.

On 6-9-2016, this Court passed an order as under :

“ *On 20.8.2016 and 1.9.2016 none appeared for the
petitioner. Today also, when the matter is called out,
none appears for the petitioner. The matter is dismissed*

for want of prosecution.”

The matter was accordingly dismissed for want of prosecution for absence of the applicant/petitioner on three occasions.

This application for restoration of writ petition was filed on 14-9-2016. The relevant averments are contained in paragraphs 3 and 4 of the application, which are reproduced below :

“3. That, the said matter was listed and called out before this Honourable Court on 20/08/2016 and 06/09/2016. On 20/08/2016, it was a working Saturday and an impression was given that Court will not take up Hearing Party matters and in fact rise early. Since many matters were listed for Hearing Party that day, the Petitioner also bona fidely believed that the matter may not reach that day. Thereafter, the present matter was listed on 01/09/2016. On the board of that day also in the noting of Hearing Party the Serial number of this matter was not there and many part heard matters were there. Therefore the Petitioner bona fidely believed other part

heard matters would go on and this matter would not reach like many other dates in past. Similarly, there were many matters listed before various Honourable Courts and it was informed to the Counsel for the Petitioner that the Hearing Party matters, which are not listed, are kept for the next day.”

“4. It is submitted that on 02/09/2016, the Junior holding for Counsel for the Respondent No.5 orally informed the Counsel for Petitioner that the matter will be mentioned by him and will be prayed for adjourning the matter for 2 weeks as the Counsel for Respondent No.5 Shri Anand Parchure (Advocate) is going to Chikhaldara. As the Counsel for the petitioner has given consent for such an adjournment, the Petitioner was under bona fide belief that the matter is accordingly adjourned.”

Bare reading of the averments made in the application shows that in spite of knowing that the matter is listed on board, the counsel remained absent. It is not the practice adopted by this Court to rise early. It is only in the event if it is found after calling 10 to 15 matters that the counsels are not present, the Court is required to retire in Chamber to avoid dismissal of the matters in default. The learned counsel for the respondent No.5

has denied the allegation that any such assurance, as specified in paragraph 4, reproduced above, was given to the learned counsel for the applicant/petitioner. The tone and tenor of the averments made in the aforesaid paragraphs clearly indicate that the counsel for the applicant/petitioner, instead of finding fault with himself, is throwing blame upon the Court and the counsel appearing for the other side for his non-appearance on the dates when the matter was called out. The two-paragraph simple application for restoration without such allegations would have been enough. The applicant/petitioner has chosen to make false statements and blame the Court as well as the counsel for the other side for the absence of his own counsel. This practice has to be deprecated. The stand taken by the applicant/petitioner lacks all *bona fides*. Apparently, the application seems to have been drafted by the counsel, as the facts stated in the application have to be within the special knowledge of the counsel appearing for the applicant/petitioner. The applicant/petitioner cannot be penalized for that by dismissing the application and the application for restoration will have to be allowed.

The application for restoration is allowed. The writ petition is restored to the file. The applicant/petitioner to pay the costs of Rs.40,000/- (Rupees Forty Thousand) to the respondent

No.5 within a period of six weeks from today.

Put up this matter for compliance of the order, on
13-1-2017.

Judge.

Andurkar/
Lanjewar