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HIGH COURT OF DELHI AT NEW DELHI

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F.A.O. No.41/2015

Decided on : 23rd February, 2016

CHAMANLAL VERMA

..... Appellant

Through: Mr. S.N. Kaul, Advocate.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Prashant Ghai & Ms. Rishti
Banerjee, Advocates for UOI.
Mr. S.K. Chaturvedi, Mr. Malay P.
Dwivedi, Advocates for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is an appeal filed by the appellant against the order dated 3.11.2014 passed by the learned ADJ dismissing the application of the appellant under Order IX Rule 9 CPC.

2. I have heard the learned counsel for the appellant and have also gone through the impugned order. The contention of Mr. Kaul, the learned counsel for the appellant is that the learned ADJ has not appreciated the facts of the case correctly and despite 'sufficient cause' having been shown, he has dismissed the application seeking setting aside

of the order of dismissal dated 22.5.2014 on account of non-prosecution as a consequence of which the appellant has become without any remedy. It has also been stated that reasons for not permitting the application of the appellant to restore the suit is tantamounting to punishing the appellant for negligence of his counsel whom he had engaged.

3. I have considered the submissions and have gone through the impugned order. It may be pertinent here to give briefly the facts of the case. The appellant herein filed a civil suit before the District Judge bearing No.241/12 on 30.5.2012 for recovery of Rs.10 lacs by way of compensation. It was stated by the appellant that he had retired from the post of Assistant Director in Central Government on 31.3.2012 and prior to that, he was permanent employee in the office of Director of Accounts, Cabinet Secretariat, R.K. Puram, New Delhi under respondent No.1/UIO. It has been stated that the appellant was working as a Senior Section Officer in the pay scale of 6500-10500, gazette group B post and on 12.4.1999, he was selected for the post of Deputy Finance Officer in Delhi Vidyut Board (DVB) on deputation in the pay scale of 10000-15600 and he joined the same. Ultimately, the appellant submits that the DVB was privatized in June, 2002 into six companies which included

three private companies, namely, BRPL, BYPL & NDPL and three Government companies, namely, IPGCL (Generation), DTL (Transmission) and DPCL (Holding). The appellant was posted in IPGCL, Rajghat Power House, Delhi by virtue of order dated 3.7.2002. It is alleged that the appellant was proceeded departmentally for some alleged misconduct by its disciplinary authority; however, on 4.6.2009, the inquiry officer exonerated the appellant of any misconduct. It is stated that the disciplinary authority instead of accepting the report of the inquiry officer, appointed a fresh inquiry officer and held a second inquiry against the appellant.

4. Feeling aggrieved, the appellant filed an original application before the Central Administrative Tribunal. On 31.8.2010, the learned Tribunal quashed the holding of the second inquiry and directed the disciplinary authority to take a decision on the basis of the first inquiry report. It is stated that on the basis of the first inquiry report, the appellant was exonerated by the disciplinary authority and all the proceedings against him were quashed. But the order of exoneration was not fully implemented which resulted in filing of a contempt petition by the appellant against respondent No.1. It is now stated that because of these

prolonged litigations, the appellant had to suffer mentally, physical and financially also. He chose to file a suit for recovery of Rs.10 lacs by way of damages. In the suit, the pleadings were complete; however, since the counsel for the appellant did not appear on as many as three dates, the suit was dismissed for non-prosecution by the trial court on 22.5.2014 in the presence of the learned counsel for the appellant/plaintiff. Thereafter an application under Order IX Rule 9 CPC seeking restoration was filed on behalf of the appellant on 14.8.2014 along with an application seeking condonation of delay before the learned ADJ, Tis Hazari Court. The reason for delay in filing the application for restoration was stated to be ill health of the appellant and the mental distress which the appellant had to suffer on account of the ailment of his wife. No documents with regard to the medical record were filed along with the application and the learned trial court dismissed the application seeking condonation of delay by holding that no 'sufficient cause' was shown to have been made out by the appellant. The learned trial court even though held that no 'sufficient cause' was shown by the appellant, still went ahead to decide the application for restoration on merits and on that score also, it found that

the appellant was negligent and no reasonable explanation was given by the appellant which will constitute 'sufficient cause' for his absence.

5. Still not feeling satisfied by the aforesaid orders, the appellant preferred the present appeal. The contention of the learned counsel for the appellant that he is being made to suffer because of the negligence of his counsel as well as the fact that he had shown 'sufficient cause' as his wife was not well and he himself was suffering from ailments, was stated to have been wrongly rejected by the court.

6. I have considered the submission made by the learned counsel for the appellant and have also gone through the record. I find that there is nothing illegal or improper or materially irregular in the order which has been passed by the learned trial court. The reason for holding this view is that this is not a case where damages are being claimed by the appellant on account of malicious prosecution. This seems to be a luxury litigation having been indulged into by the appellant in order to satisfy his ego. Neither the appellant nor his counsel appeared before the trial court after filing of the suit on three consecutive dates because of which the learned trial court had no other option except to dismiss the suit for non-prosecution. Simply by saying that the counsel was negligent that does

not free the litigant from the responsibility of following up the matter. Primarily, the responsibility of a litigant does not come to an end after filing of the suit. He must follow it up with his counsel and also go to the court to ensure that there is a proper and effective representation on behalf of the party concerned so that it results in expeditious disposal of the matter. It is correct that the appellant has filed some photocopies of the medical prescription in this court but the court cannot take cognizance of these prescriptions in the absence of the same having not been placed before the trial court. If this is permitted to be done then practically there will be no finality to the orders passed by the trial court.

7. For the reasons mentioned above, I feel that there is no merit in the appeal of the appellant and accordingly, the same is dismissed.

V.K. SHALI, J.

FEBRUARY 23, 2015
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