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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 4849/2012, CM APPL.1468/2015, CM APPL.1469/2015
RAJESH KHAN Petitioner

Through Mr. G.C. Yadav, Adv.

versus

SHIV STEEL AND ANR Respondent

Through Mr. Shekhar Gupta, Adv. for R1.
None for R2.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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22.08.2017

Respondent no. 2 arrayed on record is a proforma party.

Vide CM APPL. 1468/2015 filed by the applicant / the petitioner u/s 9 Rule 4 & 9 r.w.s 151 CPC supported with an affidavit of the applicant / the petitioner, the applicant / the petitioner seeks restoration of the petition dismissed in default on 28.11.2013 submitting to the effect that the petitioner had appeared before the Court on the date 08.10.2013 but misheard the date of the hearing and was under the impression that the case was kept in Rule and thus could not appear on 28.11.2013 when the petition had been dismissed. It has been further submitted through the application that the petitioner approached the Court regarding the status of the case on 01.12.2014 and came to know that the same had been dismissed in default on 28.11.2013 and submitted that his non-appearance was neither intentional nor deliberate.

Along with the said application, is another CM APPL. 1469/2015
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filed on behalf of the applicant / the petitioner u/s 5 of the Limitation Act r.w.s. 151 CPC seeking condonation of delay of 387 days in filing the CM APPL. 1468/2015 seeking restoration of the petition dismissed in default on 28.11.2013, submitting to the effect that the applicant learnt of the dismissal of the case only on 01.12.2014 when he enquired about his case.

Through the oral submissions made on behalf of the respondent no. 1 and the reply submitted on behalf of the respondent no. 1, the applications have vehemently been opposed placing reliance on the record of the writ petition submitting to the effect that the proceedings dated 08.10.2013 itself categorically indicate that it was the counsel i.e. proxy counsel for the applicant / the petitioner was present on the date 08.10.2013 and not the applicant / the petitioner and that the proxy counsel for the petitioner had sought an adjournment on the ground that the counsel for the petitioner was suffering from illness. It is further submitted through the response submitted by the respondent no. 1 that the application is barred by limitation and violates Article 122 of the Schedule of the Limitation Act, 1963 and no sufficient cause whatsoever had been put forth by the petitioner for the delay in seeking the restoration of the petition.

Reliance inter alia has been placed on behalf of the respondent no. 1 on the verdict of this Court titled as *Virender Kumar Vs. Maya Devi 94 (2001) DLT 848* in support of the submissions that the application seeking restoration of the petition and seeking condonation of the delay in filing the application seeking restoration of the petition ought not to be allowed in as much as it would be a legal infirmity if the same were allowed and that no sufficient grounds have also been put forth on behalf of the petitioner to

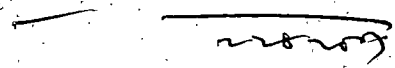
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explain its absence on the date 28.11.2013 much less the gross delay in filing the application seeking restoration of the petition.

On a consideration of the rival submissions made on behalf of the either side and also on the verdict of this Court titled as *Virender Kumar Vs. Maya Devi 94 (2001) DLT 848* it is apparent that there was appearance of the proxy counsel on behalf of the petitioner on 08.10.2013 and that the petitioner was not indicated to be present himself as per proceedings dated 08.10.2013 and thus submissions made by the petitioner through CM APPL. 1468/2015 submitting to the effect that it was the petitioner who himself was mis-communicated and misheard the date of the hearing cannot be accepted.

Furthermore, no reason has been put forth by the petitioner to explain also as to why he chose not to ascertain the date of the hearing after the date 28.11.2013 and also till the date 01.12.2014.

In these circumstances, CM APPL. 1469/2015 filed on behalf of the applicant / the petitioner u/s 5 of the Limitation Act r.w.s. 151 CPC seeking condonation of delay of 387 days in filing the CM APPL. 1468/2015 seeking restoration of the petition dismissed in default on 28.11.2013, are thus both declined.


ANU MALHOTRA, J

AUGUST 22, 2017/mk

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