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

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Decided on: 06.12.2017

+ LPA 759/2017

JAI PRAKASH

..... Appellant

Through: Mr. D.B. Yadav, Advocate.

versus

SHIV STEEL & ANR

..... Respondents

Through: Mr. Mukesh Kr. Singh, Advocate and
Mr. Sunil Goel, Advocate for R-
2/GNCTD.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

SIDDHARTH MRIDUL, J. (ORAL)

CM No. 43672/2017 (exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed off.

LPA 759/2017 & CM No. 43671/2017 (condonation of delay of 22 days in filing of appeal)

1. The present appeal belatedly assails an order dated 22.08.017, whereby, a learned Single Judge of this Court had dismissed applications filed on behalf of the appellant (petitioner therein), being CM No. 1462/2015, for restoration of the Writ Petition No. 7760/2012 titled as *Raj Kumar vs. Shiv Steel & Another* (hereinafter referred to as the 'subject petition'), which came to be dismissed in default on 28.11.2013; and CM

No. 1463/2015, seeking condonation of 387 days delay in filing the said restoration application.

2. The procedural facts as are necessary for the determination of the matter are as follows:-

a) The subject petition was listed for hearing before a learned Single Judge of this Court on 08.10.2013, on which date the following order was passed:-

“Counsel for the petitioner is stated to be suffering from Dengue. At request, renotify on 28th November, 2013.”

A perusal of the above order reveals that a proxy counsel for the appellant sought an adjournment on the specific ground that the counsel for the latter was suffering from Dengue; and pursuant thereto, the hearing was adjourned to 28.11.2013.

b) On 28.11.2013 i.e. the next date of hearing, the subject petition was dismissed in default with the following observation:-

“Matter has already been passed over once. Even on second call no one appears for the petitioner. Dismissed in default.”

c) Thereafter, the appellant filed the said CM No. 1462/2015, seeking restoration of the subject petition, along with the said application under section 5 of the Limitation Act, 1963, being CM No. 1463/2015, seeking condonation of 387 days delay in filing the former restoration application.

d) By way of the impugned order, both the said applications i.e. CM No. 1463/2015 and CM No. 1462/2015, seeking condonation of delay as well as restoration of the subject petition, respectively, were declined, while observing as follows:-

“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 indicted to be present himself as per proceedings dated 08.10.2013 and thus submissions made by the petitioner through CM PPL. 1462/2015 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 28.11.2013 and also till the date 01.12.2014.”

e) In doing so, the learned Single Judge while placing reliance on the decision of this Court in Virender Kumar vs. Maya Devi reported as (2001) 94 DLT 848, by way of impugned order dated 22.08.2017, came to a conclusion that since no sufficient ground had been put forth on behalf of the appellant to explain his absence before the Court on 28.11.2013; much less the gross delay in filing the application seeking restoration of the subject petition, it would be a travesty of justice to entertain such belated restoration applications.

3. Aggrieved by the impugned order dated 22.08.2017, the appellant has preferred the present appeal. As aforementioned, the appeal itself has been

instituted belatedly and is accompanied by an application, being CM No. 43669/2017, seeking condonation of delay of 22 days.

4. A perusal of the said application reflects that it is averred on behalf of the appellant that he had filed a petition seeking review of the impugned order dated 22.08.2017, but took the same back from the Registry “*due to intervention under scrutiny that the remedy is available under Letters Patent Act*”; which has occasioned the delay in filing the present appeal.

5. It is relevant to observe that no material in support of what has been averred in the preceding paragraph has been placed on record.

6. Even otherwise, there is no explanation forthcoming from the appellant as to when there was an appearance made by proxy counsel on behalf of the appellant on 08.10.2013, how was it incorrectly recorded by the latter that the case was kept in Rule and, consequently, no representation was made on behalf of the appellant before the learned Single Judge on the next date of hearing i.e. 28.11.2013, when the writ petition came to be dismissed. The extract of the Diary of the concerned Advocate appearing on behalf of the appellant on 08.10.2013, which is de rigueur in this behalf, has neither been placed before the learned Single Judge nor has it been produced before this Court to buttress the assertion made on behalf of the appellant.

7. In view of the foregoing and the dictum of the Hon’ble Supreme Court in the case of **Pundlik Jalam Patil vs. Executive Engineer, Jalgaon Medium Project and Another** reported as (2008) 17 SCC 448, it is axiomatic to state that equity aids the vigilant and not those who slumber over their rights.

8. Therefore, the application seeking condonation of delay in filing the accompanying appeal, as well as the appeal itself are devoid of any merit and are consequently dismissed.

No order as to costs.

**SIDDHARTH MRIDUL
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

DECEMBER 06, 2017

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