

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.39 of 2016

=====

Bharat Mahto Son of late Kali Mahto Resident of Village- Dih-Japani, P.O.-
Kiranpur, P.S. Medani Chowcki, Distt- Lakhisarai.

... .. Appellant/s

Versus

The Union of India Through The General Manager East Central Railway
Hajipur

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Gautam Kumar Kejriwal
For the Respondent (Railway)	:	Mr. Ashok Kumar Keshari Mr. Brajesh Kumar

=====

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date : 03-12-2018

Re.: I.A. no. 410 of 2016

Heard learned counsel for the appellant and learned
counsel for the respondent.

The aforesaid interlocutory application has been
filed for condonation of delay of about 10 days in preferring this
appeal with the case that the order dated 20.08.2015 passed by
the learned Tribunal was brought in the knowledge of the
appellant by his counsel in the month of August 2015, but the
appellant could not contact with his counsel due to unavoidable
family affairs in the months of August and September, 2015 and
due to festival of Durga Puja, Diwali & Chhath. However, in
the last week of November 2015, he contacted with his counsel
and filed the miscellaneous appeal on 01.12.2015 with delay of



ten days. There has been no deliberate and intentional laches on the part of the appellant in preferring this appeal within time rather due to unavoidable family affairs and due to festival.

No counter affidavit has been filed by the respondent against the aforesaid petition.

In the facts and circumstances, I find sufficient reason assigned for condoning the delay in filing the Memo of Appeal. Accordingly, the delay is condoned and the aforesaid interlocutory application is allowed.

M.A. no. 39 of 2016

The appellant has filed the aforesaid miscellaneous appeal against the order dated 20.08.2015, whereby the learned Tribunal dismissed the restoration petition filed by the appellant on merit.

Factual matrix of the case is that the appellant had filed Claim Case no. OA/OC/MA No. -MA(OA) 00061/2014 for awarding compensation against the respondent which was dismissed in default of the appellant on 26.06.2015 and for restoration of the aforesaid case to its original number, the appellant filed restoration petition vide Restoration no. 20/15 which was dismissed on 28.08.2015 by the learned Tribunal on merit.



Being aggrieved and dissatisfied with the aforesaid dismissal order, the appellant has preferred this miscellaneous appeal.

It is submitted by the learned counsel for the appellant that the learned advocate of the appellant, namely, Rajiv Mishra, who was conducting the case on behalf of the appellant has left practicing in the Tribunal and shifted to Kolkata High Court and due to aforesaid reason, he could not turn up before the Tribunal and accordingly, the aforesaid claim case filed by the appellant was dismissed in default on 26.06.2015. The appellant had no knowledge of the dismissal of the said case earlier. However, the aforesaid advocate informed him about dismissal of the aforesaid case on 15.07.2015 and on learning of dismissal of the aforesaid case and shifting of his advocate to Kolkata High Court, the appellant engaged new advocate, namely, Shri Arvind Kumar to conduct the case on his behalf and as per his advise, the appellant filed the restoration petition on 24.07.2015 for restoration of the aforesaid claim case. But, learned Tribunal arbitrarily and without appreciating the facts and circumstances of the case and without application of mind rejected the aforesaid restoration petition on merit.

On the other hand, it is submitted by learned



counsel for the respondent that the appellant is the habitual defaulter and has not appeared in the case on several occasions, resultantly, his claim case was dismissed by the learned Tribunal on 26.06.2015 and finding no merit on the restoration petition filed by the appellant, it was also dismissed on merit on 20.08.2015. Hence, this appeal has no substance in it and is liable to be dismissed.

From perusal of record, it appears that the appellant filed the aforesaid claim case and engaged an advocate, namely, Rajiv Mishra to conduct the case on his behalf, but the said advocate shifted to Kolkata High Court and did not inform the appellant about his shifting, hence, the appellant could not appear in the aforesaid case filed by him, resultantly, it was dismissed in default on 26.06.2015. However, on learning the dismissal of the said case by the appellant and shifting of his advocate to Kolkata High Court through him, later on he engaged another advocate and as per his advice, filed this restoration petition which was dismissed by the Tribunal vide order dated 20.08.2015.

It is settled principle of law that the justice should be done after hearing the parties and injustice should not be done merely on technicality by shutting down the opportunity of



hearing to the parties.

In the facts and circumstances of the case and in the interest of justice, the order dated 20.08.2015 passed by the learned Tribunal is set aside and this miscellaneous appeal is allowed.

However, the learned Tribunal is directed to proceed the case on merit and dispose it of in accordance with law within six months from the date of receipt/production of a copy of this judgment.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05.12.2018
Transmission Date	05.12.2018

