

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.245 of 2014

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellants-applicants, challenging the order, dated 16.04.2010, passed in I.A. No.471 of 2009 in O.A.A. No.32 of 2002, by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the Tribunal dismissed the application filed by the appellants-applicants, which was filed to condone the delay of 550 days in filing the restoration petition.

2. Heard both sides. Perused the record.

3. Learned counsel for the appellants has supported the averments of the application and would contend that the applicants had given justifiable cause and the reasons to condone the delay; however, the Tribunal dismissed the application, which is contrary to law and weight of evidence; there was no negligence or callous attitude on the part of the applicants; and ultimately, prayed to allow the appeal setting aside the impugned order by allowing the impugned interlocutory application.

4. Learned counsel for the respondent-railways has supported the impugned order and prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the point that arises for determination is, whether the delay of 550

days in filing the restoration petition can be condoned and the impugned order is liable to be set aside?

6. POINT: As seen from the record, the applicants filed the impugned interlocutory application under Rule 44 of the Railway Claims Tribunal Act praying to restore the main O.A.A. and for condonation of delay of 550 days in filing the restoration petition. It is pleaded that the case came up for applicants' evidence on 01.03.2005 and due to non-appearance of the advocate for the applicants, the case was dismissed for default. The case was restored vide orders dated 28.11.2005 in I.A. No.237 of 2005. Again on 28.11.2005, due to non-appearance of the learned advocate for the applicants, the case was again dismissed for default. The applicants filed I.A. No.42 of 2006 for restoration of the case, wherein the applicants were directed to issue notice to the respondent-railways. As the applicants did not serve notice on the respondent, that application was dismissed for default on 23.02.2007. Thereafter, the applicants filed I.A. No.150 of 2007 to restore the case, which was also dismissed on 05.02.2008 for default. The present impugned application is filed with a delay of 550 days in filing the restoration petition. The Tribunal had assigned number of reasons in not allowing the application. Even in spite of restoring the original application, the applicants did not choose to proceed with the matter. It reflects the callousness and gross laches on the part of the applicants in proceeding with the main application. The grounds urged before this Court do not merit

consideration. Under these circumstances, the impugned order under appeal is liable to be confirmed.

7. In the result, the appeal is dismissed, confirming the impugned order, dated 16.04.2010, passed by the Tribunal in I.A. No.471 of 2009 in O.A.A. No.32 of 2002. Pending Miscellaneous Petitions, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

26th December, 2018
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