

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Civil Application (CAO) No. 1296 of 2017
in
Misc. Civil Application St. No. 18223 of 2017 (For Restoration)
in
Misc. Civil Application (Review) St. No. 15551/2002
in
Writ Petition No. 4129 of 1998 (Decided)

Surendrasingh Ajitsingh Thakur
Vs.
State Bank of India and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. S.W. Deshpande, Advocate for applicant.
Mr. N.R. Tekade, Advocate for respondents No.5 & 6.

CORAM : MANISH PITALE, J.

DATED : APRIL 26, 2019

The applicant herein has filed application for restoration of review application which stood dismissed on account of the failure of the counsel for the applicant to remove office objections and the said application is accompanied by an application for condonation of delay. The prayer clause of the application for condonation of delay shows that there has been delay of 4920 days in filing the application for restoration.

2. It is the case of the applicant that he has suffered due to the manner in which the counsel engaged by him earlier conducted the matter in so far as the writ petition and review application were

concerned. According to the applicant, the writ petition itself was withdrawn without any specific instructions from the petitioner in that regard. On a statement made by respondent No.1 Bank regarding payment of amount to the applicant upon his seeking voluntary retirement, it appeared to this Court that grievances of the applicant had been satisfied. In this backdrop, the writ petition was adjourned for a short period to enable the counsel appearing for applicant herein to make a statement in that regard. It is the contention of the applicant that his counsel did not take any instructions from him and on his own withdrew the writ petition.

3. In this backdrop, the applicant had filed review application before this Court in the year 2002 for seeking review of the order dated 15/10/2001, whereby the writ petition stood disposed of as withdrawn. The review application was listed before this Court when time was granted for removal of office objections. But, on account of failure of the counsel engaged by the applicant in the review application in removing the office objections, on 28/01/2004, the application for review stood dismissed in default.

4. It is contended on behalf of the petitioner that he was under the impression that the review application was pending before this Court but, when correspondence was made with the Registry of this

Court, the petitioner was informed by letter dated 07/3/2017, received from the Registry of this Court that the review application itself stood dismissed in default on 28/1/2004. In this situation, the petitioner filed an application for restoration of review application on 21/08/2017 along with the application for condonation of delay of 4920 days in filing review application.

5. In order to ascertain as to what was the exact nature of grievance of the petitioner in the writ petition, this Court has perused the prayer clause in the writ petition, copy of which was handed over by the learned counsel appearing for the applicant. It appears that the main grievance of the applicant is that he was not granted promotion to which he was allegedly entitled, which had resulted in grave prejudice to him. According to the applicant, the said grievance was clearly not satisfied when he was paid amount upon his seeking voluntary retirement in the year 2001. In the review application the applicant was seeking to place the said grievance before this Court along with the grievance that the writ petition was withdrawn by his counsel without instructions.

6. Upon notice being issued on this application for restoration of the review application and for condonation of delay in moving the application for restoration, learned counsel has appeared on

behalf of the respondents No.5 and 6 and he has opposed the present application. A perusal of the cause title of the writ petition and averments made in paragraph 1 of the petition shows that respondents No.2 to 6 were arrayed as respondents by the applicant in writ petition only because they were the Branch Managers of the respondent No.1 State Bank of India at the relevant time when the applicant had discharged his duties. This Court is of the opinion that even if the applicant could be said to have made out a case for restoration of the review application for consideration of his grievance raised originally in the writ petition, which according to him was never considered by this Court, no purpose would be served in continuing with respondent No. 2 to 6 as respondents in the present application as also the original writ petition and review application since the nature of grievance raised on behalf of the applicant concerned, if at all, only the respondent No.1 State Bank of India. Therefore, it is necessary that directions be given for deletion of respondents No.2 to 6 from the array of parties in the applications as well as original writ petition itself.

7. Although the delay in filing the application for restoration of review application is huge, it appears that the applicant has suffered due to the manner in which the counsel then representing him had conducted the matter before this Court. A litigant

ought not to suffer due to the mistake or negligence of his counsel. Therefore, only on that ground and considering the fact that due to negligence of counsel even the review application stood dismissed for non-removal of office objections, this Court is granting indulgence in allowing the application for condonation of delay and for restoration of review application.

8. Accordingly, the application for condonation of delay is allowed, delay is condoned and consequently the application for restoration is also taken up for consideration and allowed in terms of prayer made therein, subject to the condition that the respondents No.2 to 6 in the applications as well as original writ petition shall stand deleted from the array of parties. The amendment shall be carried out by the learned counsel for the applicant within a period of 2 weeks from today.

9. Since the applications for condonation of delay and restoration of review application stand allowed, issue notice in the review application to respondent State Bank of India returnable in six weeks.

10. The learned counsel for the applicant is also directed to restore the record of the writ petition as well as review application, as it appears that due to passage of time the record of the writ petition and

review application has been weeded out.

11. Reconstruction of record shall also be done by the applicant within a period of six weeks from today

JUDGE

MP Deshpande