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

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Judgment delivered on: 27.10.2021

+ FAO 146/2020

LATE MOHD ASIF THROUGH HIS MOTHER LEGAL HEIR
SHABNAM Appellant

versus

SHAHID KHAN & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Vijay Kinger, Advocate (through VC).
For the Respondent: Mr. Ashish Upadhyay, Advocate (through VC).

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 19.06.2020 whereby the application of the appellant seeking restoration of the claim petition dismissed in default, has been rejected.

2. It is contended by learned counsel for the appellant that the appellant is the legal heir of the deceased and is not educated. He submits that she had entrusted the case to her advocate who did not appear when the matter was listed. He submits that the appellant herself had appeared on an earlier occasion and was under an impression that the review petition filed by the respondents had been dismissed and the matter was proceeding.

FAO 146/2020

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3. He submits that she thereafter bonafidely filed an execution petition seeking execution of the award and when she came to know that her claim petition has been dismissed for non-prosecution, she filed the subject application for restoration. It is contended that she became aware of the dismissal of her claim petition only on 02.08.2019 and accordingly on 07.08.2019 subject application for restoration was immediately filed.

4. It is contended by learned counsel for the respondent that there is no plausible explanation given by the appellant for not filing the restoration application within time.

5. Perusal of the record shows that that the claimant had been appearing on all dates in person. On the said date i.e. 12.09.2018 the order records that none had appeared for the claimant and held that claimant was not interested in pursuing the matter and accordingly dismissed the claim petition in default.

6. Subject claim petition was filed by the appellant on account of the death of her son who was employed in the factory of the respondent No.1. As per the claim petition the son died on account of electrocution in the factory premises where it is alleged that there were open wires and unrepaired electricity connection in the factory.

7. Perusal of the order sheet shows that the claim petition was earlier allowed *ex-parte* in favour of the appellant and the respondent had filed an application seeking setting aside of the *ex-parte* order which was allowed on 21.08.2018 and 2018 and thereafter the case was listed on 12.09.2018

for written statements and framing of issues. It is on 12.09.2018 that the appellant failed to appear and the claim petition was dismissed in default.

8. The order of 12.09.2018 however, records that despite availing last opportunity claimant failed to appear and file counter submissions and the opportunity was closed. The order is clearly erroneous in as much as there was no response to be filed by the claimants on the said date. The counter submissions referred to in order dated 12.09.2018 pertain to the review application of the respondent No.1 which review application already stood allowed on 21.08.2018 so there was no question of appellant filing any further counter submission.

9. Be that as it may, it is observed that the claimant has filed the claim petition with regard to the death of her son which allegedly took place in the factory premises of the respondent.

10. The Employee Compensation Act is a beneficial legislation for the purposes of providing some respite to the family of the deceased who passes away in an accident at the working place. On a hyper technical view of delay in filing application for restoration a lawful claim should not be permitted to be defeated. Reference may be had to the judgment of the Supreme Court in *Manoharan vs. Sivarajan (2014) 4 SCC 163* wherein the Supreme Court has held that refusing to condone the delay can result in a meritorious claim being thrown out at the threshold and cause justice to be defeated.

11. The explanation rendered by the appellant for non-appearance and

not filing an application within time is a plausible one. In view of the above, the delay in filing the application for restoration is liable to be condoned.

12. Accordingly, the impugned order dated 19.06.2020 is set aside. The claim petition is restored to its original number on the record of the Commissioner. The Commissioner shall proceed with the claim petition and decide the same in accordance with law expeditiously.

13. Parties shall appear before the concerned Commissioner for directions and further proceedings on 18.11.2021.

14. It is clarified that nothing stated herein shall amount to an expression of opinion on the merits of the claim of the appellant or the defence of the respondent.

15. Appeal is disposed of in the above terms.

SANJEEV SACHDEVA, J.

OCTOBER 27, 2021

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