

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

% **Date of decision: 25th August, 2021**

+ **CM(M) 555/2021**

CAPT S L SHARMA

..... Petitioner

Through: Mr. Rakesh Kumar Sharma,
Advocate.

Versus

NAROTTAM SINGH CHOPRA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

[VIA VIDEO CONFERENCING]

CM No. 28031/2021 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CM(M) 555/2021

3. This petition under Article 227 of the Constitution of India impugns the order dated 22nd February, 2021 passed by the learned Civil Judge, Tis Hazari Courts, Delhi whereby the application for restoration of the suit along with the application under Section 5 of the Limitation Act filed on behalf of the petitioner/plaintiff was dismissed.

W.P.(C)555/2021

Page 1 of 4

Signature Not Verified

Signed By: SAKSHI RAMOLA
Location:
Signing Date: 27.08.2021
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4. The petitioner/plaintiff is a retired Army Officer who is 100 per cent physically disabled. The suit from which the present petition arises was filed on behalf of the petitioner/plaintiff for permanent injunction in the year 2004. The said suit was pending adjudication before the Trial Court and was listed on 29th May, 2013, when the Advocate appearing on behalf of the petitioner did not appear and the suit was dismissed for non-prosecution. It is the case of the petitioner that he did not come to know about the said dismissal even though he kept enquiring from the said Advocate about the next date of hearing in the said case. It was only in the month of October, 2019 that the petitioner came to know that the case was dismissed on 29th May, 2013. Therefore, the petitioner preferred the application for restoration along with the application for condonation of delay, which had been dismissed by the impugned order.

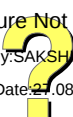
5. The counsel appearing on behalf of the petitioner, who is also the brother of the petitioner, contends that the delay in filing the restoration application was *bonafide* and unintentional and a liberal view should be taken and the same should have been allowed. He contends that he came to know of the dismissal of the case only in October, 2019 and immediately thereupon, he filed the said applications. He further states that sympathetic view should be taken on account of the petitioner being a former Army Officer who suffers from 100 per cent physical disability.

6. I have considered the above submissions in light of the impugned order passed by the Trial Court. The Trial Court has dismissed the applications of the petitioner, holding (i) that it was the duty of the litigant to see that his case is being regularly represented; (ii) that the brother of the

applicant, who is an Advocate, has been regularly appearing in the suit right from 2004 when the suit was filed, as is recorded in the various order sheets in the suit. Therefore, it can be reasonably presumed that the brother of the petitioner was aware of the status of the case; (iii) that the suit had already been dismissed in default on four different occasions on account of non-prosecution i.e., on 25th July, 2011, 29th May, 2013, 24th August, 2013 and 21st November, 2013 thereby showing complete laxity on the part of the petitioner; and, (iv) sympathy cannot come in the way and the law of the land has to be applied to every case.

7. I have gone through the impugned order and the case file. There has been inordinate delay in filing the restoration application i.e., six years after the dismissal of the suit. It is hard to believe that the petitioner did not come to know about the said dismissal of the suit, taking into account that the brother of the petitioner, who was an Advocate, was regularly appearing on behalf of the petitioner in the said suit. Even otherwise, a litigant cannot sleep over his rights and then suddenly wake up after six years and realize that his case has been dismissed and then move an application for restoration. The petitioner ought to have diligently pursued the suit filed by him and followed-up with the Advocate engaged by him. No explanation has been given at all as to why the petitioner did not follow-up on his case for a period of six years. Taking into account the fact that brother of the petitioner is an Advocate, it is hard to believe that the petitioner was not aware of the dismissal of his suit for a period of six years.

8. It may also be noted that the petitioner had earlier also filed a petition under Article 227 of the Constitution of India being CM(M) 401/2021



against the very same impugned order and the said petition was withdrawn on 4th June, 2021 by the same Advocate who appears for the petitioner in the present petition and who also happens to be the brother of the petitioner. The only reason offered for the said withdrawal was that the petitioner was hospitalized due to COVID-19. The fact that the petitioner was admitted in the hospital on account of COVID-19 could not be the ground for withdrawing the petition. Neither is this fact reflected in the order dated 4th June, 2021. Nor was any liberty taken by the petitioner to file a fresh petition after withdrawal of the said earlier petition. Further, no new facts have been pleaded which resulted in the petitioner filing the present petition after withdrawing the said earlier petition.

9. No grounds whatsoever are made out for interference under Article 227 of the Constitution of India.

Dismissed.

AUGUST 25, 2021

ak/at

AMIT BANSAL, J.