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

+ LPA 59/2020 & CM APPLs. 37546/2023, 37547/2023 & 37548/2023

SUNIL KUMAR BAKSHI Appellant

Through: Mr. Apurb Lal with Ms. Kamalika Samadder, Advocates.

versus

DSIDC LTD & ANR Respondents

Through: Mr. Vinayak Bhandari with Ms. Jaisal Singh, Advocates.

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Date of Decision: 26th July, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. Application, *CM APPL. No. 37546/2023* has been filed on behalf of appellant for restoring the present appeal that was dismissed in default vide order dated 22nd November, 2022. The application for restoration is accompanied by another application, *CM APPL. No.37547/2023* for condoning delay of 214 days in filing the restoration application.

2. Learned counsel appearing for appellant submits that the present appeal was dismissed in default by this Court vide order dated 22nd November, 2023, as no one had appeared on behalf of appellant. It is submitted that the present appeal was initially filed by counsel, Ms. Meenu Pandey. Subsequently, appellant wanted to engage a new lawyer and



therefore, Ms. Meenu Pandey had given her no objection in this regard in the year 2021 and had returned the file to appellant. Thereafter, appellant engaged a new counsel who started appearing on his behalf in the present appeal.

3. It is submitted that when the present appeal was listed on 22nd November, 2023, the counsel subsequently engaged by appellant, did not appear which led to dismissal of the present appeal.

4. It is the contention on behalf of appellant that he was not aware of the dismissal order and was in belief that his counsel was conducting his matter before court. Appellant approached his counsel on several occasions, but did not get any satisfactory reply. Therefore, appellant approached his previous counsel, i.e., Ms. Meenu Pandey in the month of July 2023 to know the status of his case. Upon checking the status on website by the previous counsel, appellant came to know about the dismissal order and non-appearance of his counsel.

5. Learned counsel appearing for appellant submits that the appellant, thus, again engaged the previous counsel for restoring the present appeal and conducting matter on his behalf. Hence, present applications have been filed by the present counsel as per law. It is contended that appellant being a senior citizen and paralytic patient, was dependent upon his counsel. Therefore, appellant could not follow up his case. The delay in filing the restoration application is unintentional and bona fide. It is, therefore, prayed that delay be condoned and appeal be restored.

6. Learned counsel appearing for respondents on the other hand has opposed the present applications. It is submitted that not only the present application for restoration is highly belated, but the writ petition that was



filed on behalf of appellant herein had also been filed belatedly after a long delay of 14 years after imposition of penalty upon him by order dated 25th October, 2005. It is, therefore, prayed that the present applications be dismissed.

7. Upon hearing counsel for the parties and perusing the record, it is manifest that appellant has been negligent and derelict in pursuing the present appeal. There was no appearance on behalf of appellant on 06th August, 2021 and thereafter on the next date, i.e., on 20th January, 2022. Subsequently, when the present appeal was listed on 06th May, 2022, adjournment was sought on behalf of appellant on the ground that the counsel had recently been engaged in the matter. Thereafter, adjournment was again sought on behalf of appellant when the matter was next listed on 21st July, 2022. The matter was adjourned to 22nd November, 2022. However, there was no appearance on behalf of the appellant on 22nd November, 2022, when the matter was dismissed in default. The present applications for restoration of the present appeal have come to be filed belatedly after a long delay of 214 days.

8. There is no plausible explanation given on behalf of the appellant. There is inordinate delay on the part of appellant in filing application for restoration. Such delay has not been explained satisfactorily.

9. Perusal of record further reveals that appellant herein was careless and indolent in approaching this Court even in the first instance at the time of filing writ petition that was filed belatedly long after imposition of penalty of reduction in rank for period of five years. The said penalty order was dated 25th October, 2005, while writ petition on behalf of appellant was filed only in the year 2019. The explanation given on behalf of appellant for delay



in filing the writ petition, was not found satisfactory by the learned Single Judge.

10. Further, it is seen from the record that appellant herein was working as Senior Cashier with respondent, posted in shop selling liquor at the material time. He was held guilty of keeping illegal consignment of liquor with adulterated contents in the departmental enquiry proceedings conducted against him. Thus, the penalty imposed upon him by the Disciplinary Authority was found to be justified by the learned Single Judge. Consequently, learned Single Judge dismissed the writ petition filed on behalf of appellant on merits as well as on the principle of delay and laches. No infirmity is found in the order passed by the learned Single Judge.

11. It has been held time and again in a catena of judgments that discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. In the present case, this Court finds no reasonable or justifiable explanation for delay in filing the writ petition after long delay of 14 years and for filing the restoration application after a delay of 214 days.

12. On the issue of delay, Supreme Court in the case of ***Chairman/Managing Director, Uttar Pradesh Power Corporation Limited and Others Vs. Ram Gopal, (2021) 13 SCC 225***, has held as follows:

“10. Seen from a different perspective also, it is clear that the respondent has shown little concern to the settled legal tenets. Even a civil suit challenging termination of services, if filed by the respondent, would have undoubtedly been barred by limitation in 1990. In a similar situation, where the appellant belatedly challenged the promotion of his junior(s), this Court in P.S. Sadasivaswamy v. State of T.N. [P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152 : 1975 SCC (L&S) 22] , held as follows : (SCC p. 154, para 2)



“2. ... if the appellant was aggrieved by it he should have approached the Court even in the year 1957, after the two representations made by him had failed to produce any result. One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971. ... In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957, cannot be reproduced now. ... It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.”

11. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and the writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In S.S. Balu v. State of Kerala [S.S. Balu v. State of Kerala, (2009) 2 SCC 479 : (2009) 1 SCC (L&S) 388] , this Court observed thus : (SCC p. 485, para 17)

“17. It is also well-settled principle of law that “delay defeats equity”. ... It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.””



13. Considering the aforesaid detailed discussion, this Court finds no plausible and reasonable explanation on behalf of appellant in approaching this Court belatedly. Consequently, this Court is not inclined to condone the delay.

14. The present applications for restoration of appeal and condonation of delay are accordingly dismissed.

MINI PUSHKARNA, J

MANMOHAN, J

JULY 26, 2023

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