

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3772 OF 2016
IN
REJECTED CASE NO. 647 OF 2013
IN
FIRST APPEAL (ST) NO. 25328 OF 2009

Nitin Kishan Gund

...Applicant

Versus

Union of India through the General
Manager, Western Railway

...Respondent

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CHAVAN

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Mr. Kuldip Singh for the Applicant.

Mr. Suresh Kumar a/w Ms. Molinee Chougule for the
Respondent/Railway.

CORAM : M.M.SATHAYE J.
DATE : 7th DECEMBER 2023

PC. :

1. Heard learned counsel for the Applicant and learned counsel for the Respondent/Railways.

2. This is an application for restoration of the above appeal which was dismissed under conditional Order dated 05.01.2010 for non payment of bhatta charges. There is stated delay of 5 years and 15 days in filing the application.

3. Learned counsel for the Applicant submitted that the Applicant/Appellant is a poor handicapped person who has suffered

railway accident in which he lost both his legs. He urges that because of his inadvertent error, bhatta charges remained to be paid and for this technical lapse, the Applicant should not suffer and must be given an opportunity to prosecute the appeal. He further submitted that under the impugned order, no compensation is granted to him and as such opportunity is deserves to be granted for prosecuting the appeal on merits.

4. Learned counsel for Respondent/Railways has opposed the condonation of delay on the ground that hardly any reasons are offered in the application, that can constitute sufficient cause.

5. I have considered the submissions of both the sides. Considering the fact that the Applicant is stated to be a victim of railway's accident having lost both his legs and further considering the fact of dismissal of appeal on technical ground of non payment of bhatta charges, this Court is of considered view that the application deserves to be allowed and the appeal deserves to be heard on merits.

6. Further since in the facts of the case, the learned counsel for the Applicant has shown willingness to pay token cost from his own pocket because for a client like the Applicant, who was already in a disadvantaged situation himself, he ought to have been more careful about procedural matter.

7. In that view of the matter, the following order is passed:

(i) Civil Application is allowed in terms of prayer clause (a); Delay is condoned; Appeal is restored to file.

(ii) This is subject to condition that Mr. Kuldip Singh, learned counsel appearing for the Applicant, shall pay token cost of Rs.1500/- to Kirtikar Law Library, Room No.36, High Court, Mumbai within a period of two weeks from today and shall submit the receipt showing compliance, within the said period.

(iii) Civil Application is disposed of accordingly.

8. All concerned to act on duly authenticated or digitally signed copy of this order.

[M.M.SATHAYE,J.]