



C.R.P.No.4272 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 27.03.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.4272 of 2019

Renu Kumar

.. Petitioner / Applicant / Petitioner

Vs

1.The General Manager

BSNL, Gray's Hill

Coonoor - 643 101.

2.The AGM (A &PR)

Office of the Chief General Manager

Telephones, BSNL

Tamil Nadu Circle

80, Anna Salai

Chennai - 640 002.

3.The Accounts Officer (TR)

Office of the General Manager

BSNL, Gray's Hill

Coonoor - 643 101.

4.The Divisional Engineer

(NWO) & Arbitrator

Office of the PGMT, BSNL

Central Telephone Exchange

State Bank Road

Coimbatore - 641 018.

.. Respondents / Respondents /
Respondents



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Prayer : Civil Revision Petition filed under Section 115 of CPC praying to set aside the fair and decretal order dated 30.07.2019 passed in I.A.No.79 of 2017 in AOP.No.53 of 2012 by the Hon'ble Principal District Judge of Nilgiris at Udhagamandalam, and allow the application in I.A.No.79 of 2017 in AOP.No.53 of 2012 pending on the file of the Principal District Judge of Nilgiris at Udhagamandalam.

For Petitioner : Mr.C.A.Diwakar

For Respondents : Mr.K.Anbarasan [R1 to R4]

ORDER

1.1 Challenging the arbitral award passed under Section 7-B of the Telegraph Act, 1885, the revision petitioner herein has moved the Appellate forum constituted under the Act. On 22.07.2015, when the matter came before the appellate forum, there was no representation for the revision petitioner, consequent to which, the matter was dismissed for default. Upon coming to know about the same, the revision petitioner has moved the appellate forum for restoring the appeal along with an application for condonation of delay of 836 days.

1.2 In the affidavit filed in support of this application, the revision petitioner has alleged that she had been to her home town in Rajasthan



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during first week of July 2017, and returned to Nilgiris only on 30.11.2017, and that when she met her counsel on 01.12.2017, she had been informed about the dismissal of the above AOP. In the meantime, her counsel is also stated to have suffered certain pulmonary disease and that he had been hospitalised and away from Ootacamund for over six months, owing to which he could attend the court hearings during that relevant time when the case was heard. Hence, she has filed an application in I.A.No.79/2017 to set aside the order of dismissal in AOP, which was dismissed by the appellate forum.

1.3 This was resisted by third respondent on the ground that this matter is of the year 2012, and that after several adjournments taken by the revision petitioner, the case was posted finally to 22.07.2015, and on that date too, the petitioner never appeared to argue the matter, and it shows her attitude that she was very lethargic and ought to be aware of the consequences thereof. He also denied the claim of the revision petitioner that he was away in Rajasthan, as he was very much available in Nilgiris through out. Therefore, the delay of 836 days in filing an application to set aside the dismissal order is wanton and deliberate on the part of the revision



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petitioner, and that the balance of convenience is in favour of the respondents, the said application should be dismissed with costs.

1.4 On weighing the rival contentions, the appellate authority chose to dismiss the application for condonation of delay. It is said that the reasons adduced are insufficient.

2. Heard both sides. The learned counsel for the revision petitioner submitted that the counsel for the revision petitioner before the appellate authority was down with coronary ailments, and he was not regular in his appearance and that the dismissal has escaped his notice.

3. Per contra, the learned counsel for the respondents would submit that it is settled law that the client should seek the counsel, and therefore, even if the counsel has omitted to follow the case, the duty is still cast on the revision petitioner to seek his counsel to ascertain the status of his case. The client cannot couch his negligence with his subtle allegations against his counsel.

4. Right to appeal is a substantial right under the statute. While there is



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merit in the submissions of the counsel for the respondents, this Court also finds equal force in the need for granting a hearing to the revision petitioner before the appellate authority. It would have been appreciable if the revision petitioner was diligent enough, but the facts before this Court does not indicate that the revision petitioner was callously negligent in pursuing the matter either. Therefore, this Court deems it appropriate to allow this revision, but for all the inconvenience it has caused to the other side, the revision petitioner ought to pay a cost of Rs.6,000/-.

5. The revision is allowed, subject to payment of cost of Rs.6,000/- to the General Manager, BSNL, Coonoor, within a period of two weeks from today.

6. Post the matter for reporting compliance on 11.04.2023.

27.03.2023

To:

- 1.The District Juge of Nilgiris @ Udhagamandalam.
- 2.The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

ds

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