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

+ **RFA(COMM) 11/2023**

VINOD GARG

.....Appellant

Through: Mr. Vikesh Sharma, Mr. Satinder
Tiwari & Mr. Pravesh Sharma, Advs.

Versus

KAMLESH MEHTA SINCE DECEASED

THROUGH LRS

.....Respondent

Through: Mr. Kunal Srivastava, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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13.08.2024

CM No.24081/2024 (of the appellant for restoration)

1. This is an application seeking restoration of the above-captioned appeal that was dismissed in default on 27.03.2024 on account of non-appearance of the counsel.
2. The above-captioned appeal was listed before this Court for the first time on 20.01.2023. On the very first hearing, an adjournment was sought on behalf of learned counsel appearing for the appellant on the ground that he seeks time to obtain instructions for prosecution of the appeal. At his request, the appeal was adjourned to 24.01.2023.
3. On 24.01.2023, once again an adjournment was sought by the counsel for the appellant on the ground of placing the relevant documents on record and on his request, the hearing was adjourned to 09.02.2023. On 09.02.2023 as well, the learned counsel appearing for the appellant once again sought an adjournment for placing on record the relevant documents. He further stated that there may be a possibility of an amicable settlement and this Court clarified that the parties were at liberty to pursue for the settlement. Accordingly, at the request of the learned counsel for the appellant, the



present appeal was adjourned to 13.03.2023.

4. On 13.03.2023, once again a request for an adjournment was made by the learned counsel appearing for the appellant on the ground that the main counsel who was to argue the matter was indisposed. The order passed on the aforesaid date recorded that repeated adjournments were being sought on behalf of the appellant and that there are three other counsels who had signed the *vakalatnama* on behalf of the appellant. Notwithstanding the same, the matter was adjourned to 19.07.2023 at the request of the learned counsel for the appellant.

5. In the meanwhile, the respondent filed an application to place on record certain document, the same was listed before this Court on 24.03.2023 and notice of the same was issued. It was relevant to note that none appeared on behalf of the appellant before this Court on 24.03.2023. The respondent also moved another application (CM No.16291/2023) on 06.04.2023, seeking certain directions and on the said date as well none appeared on behalf of the appellant. Notice of the said application was issued, returnable on 09.05.2023.

6. On 09.05.2023 as well none appeared on behalf of the appellant and the matter was adjourned to 19.05.2023. On 19.05.2023 also, none appeared on behalf of the appellant and the application (CM No.16291/2023) was directed to be listed on 29.05.2023.

7. On 29.05.2023, once again none appeared on behalf of the appellant. On that date, the application could not be taken up for hearing due to the paucity of time and the appeal was adjourned to 19.07.2023.

8. On 19.07.2023, once again a request for an adjournment was made on behalf of the learned counsel for the appellant and the appeal was directed to be listed on 26.07.2023. The order dated 26.07.2023 indicates that no appearance was given on behalf of the appellant and the matter was renotified



for 14.08.2023.

9. On 14.08.2023, none appeared on behalf of the appellant and in the interest of justice, adverse orders were deferred and notice of the default was directed to be issued to the appellant for 24.08.2023.

10. On 24.08.2023, the appellant appeared in person and the appeal was renotified for 19.10.2023. The bench could not hear the matter on 19.10.2023 and the matter was adjourned to 20.10.2023. On 20.10.2023, none appeared on behalf of the appellant and this Court adjourned the matter for 27.03.2024. However, on 27.03.2024, also none appeared for the appellant and therefore the above-captioned appeal was dismissed in default.

11. Thereafter the appellant filed an application seeking restoration of the above-captioned appeal (CM No.24081/2024). The same was listed on 25.04.2024, however, on that date, the learned counsel for the appellant, who had joined the proceedings through video conferencing, sought an adjournment on the ground that he did not have the case files with him. At his request, the matter was listed for 10.07.2024 and the notice of the application for restoration of the appeal was issued for today, that is 13.08.2024. This Court also clarified that if the application for restoration of the appeal is allowed and the appeal is restored, endeavour would be made to hear the appeal. The Court also directed the Registry to place a digital copy of the Trial Court record which has since been placed on record.

12. The learned counsel appearing for the appellant states that he is not aware of the matter and has no instructions to address the final arguments on merits of the appeal. He states that, except for requesting that the above-captioned application be allowed and the appeal be restored to its original position, he is not ready with the matter and the same needs to be further adjourned.



13. The record indicates that although the matter was listed on several occasions, the counsel for the appellant has not sought to advance submissions on merits. Thus, this court had put the counsel to the notice and clarified in the order dated 10.07.2024 that if the appeal was restored, endeavour would be made to hear the appeal.

14. The learned counsel appearing for the respondent stoutly contested the present application. He points out that the only ground stated in the application is that the previous counsel had informed the appellant that he would pursue the present appeal and had not done so, therefore, the appellant was unrepresented before this Court on 27.03.2024. He points out that the *vakalatnama* of the present counsel was filed much prior to 27.03.2024 and there is no credible explanation as to why the present counsel (Mr. Chandan Mishra) who was engaged by the appellant and in whose favour the *vakalatnama* was filed prior to 27.03.2024 did not appear on 27.03.2024.

15. As set out above, the hearing of the present appeal has been deferred/adjourned for more than dozen times on one pretext or the other, at the request of the learned counsel for the appellant. It is thus apparent that the appellant is not serious in pursuing his appeal.

16. In view of the above, we do not consider it apposite to allow the present application. The same is accordingly dismissed.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 13, 2024

‘gsr’

Click here to check corrigendum, if any