

(2018) 07 DEL CK 0265
In the Delhi High Court
Case No : W.P.(C) 584 OF 2013

**M/S Continental Auto Services @APPELLANT@Hash Secretary-Labour
And Anr**

Date of Decision : 13-07-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151
Limitation Act, 1963 — Section 5

Citation : (2018) 07 DEL CK 0265

Hon'ble Judges : PRATHIBA M. SINGH, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

CM No.25590/2017 (for restoration of Review Petition No.56/2015); CM No.25591/2017 (condonation of delay of 456 days in filing restoration application)

1. In W.P.(C) 584/2013, which was filed by the Management, M/s Continental Auto Services impugning the award dated 31st May, 2012 in

I.D.No.101/2009, the applicant Mr.L.P.Pant, was impleaded as respondent No.2.

2. The writ petition was allowed by this Court on 23rd July, 2014.Â

While relying on the decision of Apex Court in the case of All India Reserve Bank Employees Association vs. Reserve Bank of India AIR 1966 SC

305, the respondent No.2/claimant was held not to be a workman.Â Hence, the impugned award dated 31st May, 2012 was set aside.Â The Review

Petition No.56/2015 was filed by the respondent No.2/applicant along with the CM No.3158/2015 seeking condonation of delay in filing the review

petition on which notice was issued to the writ petitioner/Management.Â

3. On 17th March, 2016, as none had appeared on behalf of the applicant/respondent No.2, the review petition as well as the CM No.3158/2015, were

dismissed in default.Â Thereafter, the applicant/respondent No.2 filed two applications i.e. CM No.25590/2017, under Section 151 CPC for

restoration of the review petition & CM No.25591/2017, under Section 5 of the Limitation Act for condonation of delay of 456 days in filing the

restoration application inter alia on the following grounds:

(i) On 17th March, 2016, the counsel for the respondent No.2 could not appear before the Court as he was stuck in a traffic jam near India Gate.

(ii) When the counsel reached the Court on that date, on enquiry he came to know that the matter had been dismissed in default for nonappearance on

behalf of the respondent No.2.

(iii) On 4th October, 2016, learned counsel for the applicant filed a fresh CM application vide Diary No.145374/2016 for restoration of the review

petition.Â During this period his old clerk expressed his inability to work with him further.

(iv) Due to some misunderstanding, the application filed on 4th October, 2016, was returned under certain objections and was not refiled.Â However,

the counsel remained under the bonafide impression that the restoration application has already been filed and notice must have been issued.Â

Therefore, he did not check the status of the earlier restoration application on an assumption that the said application would be coming up for further

hearing shortly.

(v) InÂ theÂ meantime,Â inÂ April/May,Â 2017,Â whenÂ the applicant/respondent No.2 contacted his counsel to enquire about the status, he

inspected the file and came to know that the application filed by him on 4th October, 2016 was returned long back due to objections. (vi)Â He

contacted his old clerk but due to lapse of time, the old clerk was unable to recollect about the application.

(vii) In June, 2017 the Courts were closed and immediately on reopening the application seeking restoration of the review application [CM

No.25590/2017] was filed on 12th July, 2016 only with the CM No.25591/2017Â for condonation of delay of 456 days, which has been duly

explained.

4. During the course of hearing, learned counsel for the applicant/respondent No.2 has submitted that the applicant is a poor workman and delay of

456 days may be condoned, subject to such conditions, as may be deemed fit.

5. A perusal of the record shows that the reason for huge delay of 456 days in filing the application has been attributed to the counsel and his old clerk

but the affidavit in support thereof has been filed by the petitioner.Â The affidavit filed by the petitioner is silent as to what steps he had taken to

know the status of his restoration application from 17th March, 2016 till July, 2017, when the restoration application was filed by him.

6. Learned counsel for the applicant/respondent No.2 has clearly admitted that matter was listed on 17th March, 2016 and he could not appear when it

was taken up.Â But on the very same date on reaching the Court when he enquired about the status of the matter, he was duly informed that it had

been dismissed in default.Â Thereafter, neither the counsel nor the applicant/respondent No.2 took any steps within the prescribed time or within a

reasonable time to file an application for restoration of the review application.Â The applicant/respondent No.2 has been held not to be a workman by

this Court.Â Huge delay of 456 days in filing the application seeking restoration of the review application has remained unexplained by the

applicant.Â It is not the case of the applicant/respondent No.2 that he was not aware of the date of hearing of 17th March, 2016.Â He has not

explained as to why he waited for almost a year to contact his counsel for the status of the case.Â The applicant/respondent No.2 has not even

mentioned the date when he contacted his counsel in April/May, 2017.Â Even if it is assumed for the sake of argument that the applicant contacted

the counsel only in April/May, 2017, that is after more than one year of dismissal of review application in default, the restoration application could have

been filed soon thereafter.Â It has also not been explained as to when the counsel for the applicant came to know about dismissal in default on 17th

March, 2016 why, the Review Petition No.56/2015Â and CM No.25591/2017 seeking condonation of delay in filing the restoration application has

been filed after more than a year.Â Â Â Â

7. In view of the above discussion, as the applicant/respondent No.2 has not been able to explain the delay of 456 days in filing the application for

restoration of the review petition. The prayer for condonation of delay in filing the restoration application is declined and as a result, restoration

application is also dismissed.