

(2020) 09 JH CK 0046
In the Jharkhand High Court
Case No : C.M.P. No. 858 Of 2019

Pramod Khosla & others

APPELLANT

Vs

M/s Khosla Steel Industries Private Ltd. & others

RESPONDENT

Date of Decision : 04-09-2020

Acts Referred:

Citation : (2020) 09 JH CK 0046

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Akhilesh Shrivastava, Vikash Kumar, Indrajit Sinha

Judgement

Mr. Akhilesh Shrivastava assisted by Mr. Vikash Kumar appears for the petitioner and Mr. Indrajit Sinha appears for respondent nos. 3, 5 & 6 through Video Conferencing.

Second supplementary affidavit has been filed on 27th August, 2020 by the petitioners enclosing the extract of paper publication made in two Daily Newspapers, namely, Dainik Bhaskar & Times of India, Edition, Jamshedpur in proof of service of notice on opposite party nos. 7 & 8 at their last known address.

Having regard to the statements made in this affidavit and proof thereof annexed thereto, service of notice on opposite party nos. 7 & 8 is treated to be valid. However, they have not chosen to enter appearance till date, though the matter has been adjourned on previous date i.e., 21st August, 2020.

The instant restoration petition has been preferred for restoration of Company Appeal No. 6 of 2014, which stood dismissed for default for non-compliance of the order dated 24th November, 2017, on failure to file part requisites for service of notice on respondent nos. 3 and 5 to 8, who are opposite party nos. 3 & 5 to 8 herein. It is submitted that information of dismissal of the Company Appeal as against these respondents came to the knowledge of learned counsel for the petitioner when the Company Appeal was listed before another Bench. Therefore,

there has been delay in preferring the instant restoration petition for condonation of which, I.A. No. 526 of 2020 has been preferred. The delay is not intentional. On behalf of the appellant, requisites were filed for service of notice on these respondents in terms of the order dated 24th November, 2017 under registered cover, though requisites were also required to be filed under ordinary process which learned counsel for the appellant inadvertently failed to take note of. The appeal is pending before a Coordinate Bench where respondent nos. 3, 5 and 6 have already entered appearance, but the matter is awaiting the outcome of the instant restoration matter.

Learned counsel for the petitioner also prays that consequent upon condonation of delay, the appeal may also be restored as against opposite party nos. 3 and 5 to 8 i.e, respondent nos. 3 and 5 to 8 in the Company Appeal. The appellant has good grounds to succeed in the appeal.

Learned counsel for the opposite party nos. 3, 5 and 6 Mr. Indrajit Sinha strongly opposes the prayer. However, opposite party nos. 7 and 8 have not entered appearance despite valid service of notice.

I have considered the submission of learned counsel for the parties in the light of the aforesaid facts, which arise due to dismissal of the Company Appeal as against certain respondents i.e. opposite party nos. 3 and 5 to 8 therein. It appears that in compliance of the order dated 24th November, 2017, appellants filed requisites for service of notice under registered cover on these respondents, but inadvertently failed to file requisites for service under ordinary process as learned counsel for the appellants could not take note of that part of the order. The lapse does not appear to be deliberate. However, this fact has come to their notice when the company appeal was taken up before the Coordinate Bench.

In those circumstances, having found their explanation valid, delay of 687 days in preferring the instant restoration petition is condoned. I.A. 526 of 2020 stands disposed of. Considering the entire facts and circumstances in this perspective and on being satisfied with the explanation urged, this Court does not find any deliberate lapses on the part of the petitioner in complying with the order of the Court which led to dismissal of the appeal as against these opposite party nos. 3 and 5 to 8. As such, Company Appeal No. 6 of 2014, as against respondent nos. 3 and 5 to 8, is restored to its original file, however, subject to deposit of cost of Rs. 5,000/- in JHALSA within a period of 2 weeks and receipt thereof be also filed within the same period in the Registry . The instant C.MP stands allowed in the aforesaid manner.

Mr. Akhilesh Shrivastava learned counsel for the petitioner undertakes to comply the order dated 24th November, 2017 within a period of 2 weeks, so far as service of notice under ordinary process on respondent nos. 3 and 5 to 8 is concerned.