

(2013) 11 AHC CK 0142

In the Allahabad High Court

Case No : Delay Condonation Application No. 291303 of 2013 and Civil Misc.
Recall Application No. 291304 of 2013 in C.M.W.P. No. 14489 of 2000

Roshan Lal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2014) 102 ALR 652

Hon'ble Judges : Rakesh Tiwari, J; Bharat Bhushan, J

Bench : Division Bench

Judgement

Rakesh Tiwari and Bharat Bhushan, JJ.—Heard learned Counsel for the parties on Delay Condonation Application No. 291303 of 2013 as well as on Recall/ Restoration Application No. 291304 of 2013. Cause shown for delay in filing the aforesaid restoration application is not sufficient. Accordingly, the delay condonation application is rejected.

2. The applicant filed Civil Misc. Restoration Application No. 209262 of 2013 for recall of the order dated 18.7.2013 by which the writ petition was dismissed in default. The order dated 18.7.2013 reads thus:

List has been revised. None appears on behalf of the petitioner to argue the case.

The petition is therefore, dismissed for non-prosecution. Interim order, if any, stands vacated.

3. The aforesaid restoration application was rejected vide order dated 23.9.2013 with liberty to the applicant to file a better affidavit, which reads thus:

Heard Counsel for the petitioner and perused the record.

The cause shown is not sufficient. Accordingly, the restoration application is rejected.

However, the Counsel for petitioner may file a better affidavit explaining the

reasons for his non appearance on 18.7.2013 when the petition was dismissed for non prosecution.

4. Pursuant to the aforesaid order dated 23.9.2013, the applicant has filed Restoration Application No. 291304 of 2013 for recall of the order dismissing the writ petition in default dated 18.7.2013 quoted above, inter alia, on the ground that the case was listed at Sl. No. 40 of the daily cause list dated 18.7.2013 under the heading of "Old Cases"; that as the applicant's Counsel was engaged in another Court he could not reach in time when the case was taken up in the revised list of hearing cases and was dismissed in default vide order dated 18.7.2013. It is stated that the presence of applicant's Counsel was beyond his control and is liable to be ignored. It has been prayed that the order dated 18.7.2013 may be recalled and the writ petition be restored to its original number and may be heard on merit.

5. We find from perusal of the earlier restoration application as well as the present restoration application No. 291304 of 2013 that the reasons given by the applicant are the same and no better reason has been given for recall of the aforesaid order dated 18.7.2013 in the subsequent application. The case of the petitioner was listed under two headings in this case (i) under the heading of "Old Cases" and (ii) under the heading of "Hearing Cases". The ground taken in the present restoration application No. 291304 of 2014 is insufficient. The earlier restoration application has been rejected on the same ground or even no rejoinder-affidavit to the counter-affidavit filed by the learned Standing Counsel has been filed by the petitioner to rebut the averments made therein.

6. We may also point out here that Chapter VI Rule 13 of Allahabad High Court Rules, 1952 provides that when a Counsel is engaged in another Court, he must file an engagement slip in other Court where his case is listed. Chapter VI, Rule 13 of the Allahabad High Court Rules, 1952 provides as under:

13. No party has right to have a case put out of its place in Cause List owing to Advocate's engagement elsewhere.--No party shall have the right to have a case put out of its place in the Cause List on the ground that his Advocate or his brief-holder is engaged before another Bench.

The Bench may, however, order any case to stand out of its place in the list if such Advocate or brief-holding is alone in the case and is actually arguing a case before another Bench or is alone in a case that is actually being heard by another Bench and has, before the case is called on, given information in writing to the Bench Reader that he is so engaged before another Bench. A case will, however, not ordinarily be so put out of its place unless there is another case in the List in which the parties or their Advocates are ready and present in the Court-room so that the case may be proceeded with at once.

It shall be the duty of the Advocate to inform the Bench Reader as soon as the case, in which he is engaged in the manner indicated above in another Bench, is over.

A case shall not ordinarily be put out of its place in the Cause List under this Rule more than once.

7. Admittedly, in the present case, the petitioner had neither informed the Bench Reader of the Court in writing nor made any arrangement to inform the Court that he is engaged elsewhere. In case, petitioner would have informed the Reader in writing, his contention would have certainly received some support from this. There is no other document to support the contention of learned Counsel for the petitioner that he was busy in another Court.

8. On a query made by the Court, learned Counsel for the applicant submits that he has got three junior Counsel and one clerk yet no engagement slip has been filed. Moreover, electronic boards displaying the serial numbers and the details of the case with the names of the Advocates have been installed in nook and corner of the Court premises as well as in corridors and in Court rooms so that any Counsel, who is any where in the Court premises may know the status position of his case in any Court at any given point of time. Learned Counsel for the applicant has not attended the case when it was taken up in the revised list under the heading of "Old Cases" nor did he attend the case when it was taken up again for final hearing under the heading of "Hearing Cases". Since the ground taken is insufficient to explain the absence of learned Counsel for the applicant the present recall application is rejected.