

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 196/2012

In the matter of :

Shri Kamal Singh Yadav,
S/o Late Daya Ram Yadav,
R/o 2C/2988 Sales Tax Office Lane,
Shastri Nagar, Saharanpur, U.P. 247001.Applicant

Versus

- 1 Shri N. Diwakar,
Registrar, Cooperative Societies,
Govt of NCT of Delhi,
Parliament Street,
New Delhi-110001.
- 2 The President/ Secretary,
The Mayurdhwaj CHGS Ltd,
60, Patparganj, Delhi-110092.Respondents.

Naini Jayaseelan, Financial Commissioner.

Order Dated 29.05.2015

1. This order will dispose of the review petition under order 47 read with Section 151 of CPC against the order of this court dated 06.03.2012 passed by my predecessor thereby dismissing the restoration filed by the applicant.
2. In the order dated 06.03.2012, this Court disposed an application dated 14.11.2011 under order '9' rule 4 read with section 151 of CPC for seeking restoration of case no. 28 of 2005 which was dismissed in default for non-prosecution vide an order dated 23.04.2010.
3. In this order Court considered the averments of the applicant that applicant's counsel never appeared before the Court and only his clerk or the proxy counsel appeared. And applicant had no knowledge about the order dated 23.04.2010 nor the counsel informed him about the same.
4. After considering the averment of the applicant this Court observed that *both the counsel for the petitioner as well as the petitioner himself are to blame. If a petitioner is involved or interested in a case he would be inquiring about its progress from his counsel regularly, at the very least. However this case has been characterized by sheer indifference and neglect on the part of both petitioner as well as his counsel. Even if the petitioner had come forward, say within a few days of the order dated 23.04.2010, any reasonable Court would have relented. However, approaching the Court*

after a hiatus of more than one and half years seeking restoration would be crossing all bounds of reasonableness. And the Court not having been convinced, dismissed the application.

5. Applicant has filed the application to review the order dated 06.03.2012 passed by this Court. In its application applicant makes the averments on the facts/events of the case which were already on record.

6. In his averments applicant once again submitted that the applicant was never informed about the correct status of the case by the previous counsel and non-appearance of the applicant on the date fixed was not deliberate but due to lack of information. When on 16.10.2011, applicant visited his counsel's office to know about the progress of the case, he did not inform him properly. On 20.10.2011, applicant went to o/o Financial Commissioner and inspected his file. It was for the first time applicant came to know about the dismissal of his case. Being aggrieved by the order dated 24.03.2010, applicant filed a restoration application dated 14.11.2011 which was dismissed vide order dated 06.03.2012.

7. I have considered all the averments made by the applicant in r/o his review application further the order 47 rule 9 of CPC reads as under:

“Application for review of judgment.- (1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

8. Perusal of the order dated 06.03.2012 reveals that the restoration application was dismissed on the ground that original revision petition bearing case no. 28/05 was dismissed due to non-prosecution and its restoration application dated 14.11.2011 was dismissed by the Court vide order dated 06.03.2012 as the Court found that petitioner as well as his counsel were not interested in pursuing the case. Counsel for petitioner never appeared in all the '9' hearings held in the case 28/05. Petitioner also did not enquire from his counsel regarding progress of the case. Even for the restoration of the case the application filed only after more than one and half years of the dismissal of the case.

9. In this review petition, applicant failed to bring in the notice of the Court reason for delay in filing of the application dated 14.11.2011 for restoration of the case no. 28/2005. Applicant cited only the fault of its counsel but this fact was already considered by the Court in its order dated 06.03.2012. Applicant has failed to bring in the notice of the Court any new fact or evidence or any mistake or error in the order as a sufficient reason for review the order dated 06.03.2012.

10. Therefore in view of above, I do not find any reason to review the order dated 06.03.2012. Accordingly application is dismissed.

11. Announced in the open Court.

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(NAINI JAYASEELAN)
Financial Commissioner
29th May, 2015.