

SUPREME COURT OF INDIA

Hiren Singha Roy

Vs.

Howrah Improvement Trust

(S.S. Ahmed and D.P. Wadhwa JJ.)

06.04.2000

JUDGMENT

S. SAGHIR AHMAD, J.

1. Leave granted.

2. We have heard the learned Counsel for the parties. The writ appeal filed by the appellant before the Division Bench of the High Court was within time but it was dismissed in default on 2.9.1997 as nobody appeared on behalf of the appellant before the High Court on that day. On 23.7.1998 an application for recalling the order dated 2.9.1997 was filed by the appellant but it was dismissed on the ground of limitation invoking the provisions of Article 122 of the Limitation Act which prescribes a period of 30 days for making an application for restoration of an appeal dismissed in default. The High Court has held that the date of knowledge on which the order of dismissal was passed was immaterial. In the application for restoration the appellant had pleaded the material facts which are reproduced hereunder:-

Your petitioner/appellant states that Mr. Ashok Kumar Roy was and is the sole advocate in the matter for the petitioner/ appellant.

That the said learned advocate suffered a severe heart attack in 1996 and was advised to be hospitalised. In fact he was ultimately admitted to Daffodil Nursing Home and was kept in I.C.U. for few weeks.

That further again on 20th August, 1997, the said learned advocate felt severe chest pain and fell seriously ill. He had to undergo medical treatment. According to the medical advice he was advised 'bed rest' for one month. The said learned advocate had nothing but to follow the said medical advice and was confined to bed for the said period i.e. from 20.8.97 to 20.9.97.

Your petitioner/appellant has to produce the prescription, if necessary at the hearing.

That on 15.6.98 the petitioner/appellant had been to the said learned advocate to enquire about the fate of the aforesaid appeal. He was also requested to take steps for early hearing of the appeal. On being enquired and requested by the petitioner/appellant the said learned advocate assured the petitioner/appellant that he would take steps to get the matter heard by this Hon'ble Court shortly, he would mention the matter before the Hon'ble Court on Monday next i.e. 26.6.98.

Accordingly, the said learned advocate mentioned the matter before the Hon'ble Mr. Justice, Satya Brata Singh, and the Hon'ble Mr. Justice, Dibyandu Bhusan Dutta on 22.6.98 for inclusion in their Lordships list 'for hearing.'

That despite such mentioning before the said Hon'ble Court on 22.6.98 the matter was not included in the 'hearing list' of their Lordships, the learned advocate caused an enquiry through a Court Clerk Sri Anup Dutta as to why in spite of mentioning before their Lordships the matter was not appearing in the list.

That being directed by the learned advocate, said Sri Anup Dutta searched about the matter and informed him on 14.7.98 that the said appeal being FMA 555 of 1989 was already dismissed for default on 2.9.97 by their Lordship the Hon'ble Mr. Justice, R. Dayal and the Hon'ble Mr. Justice, Amitava Lala.

Your petitioner/appellant states that as the learned advocate for the petitioner/ appellant fell ill medically, advised bed rest, acted accordingly and was confined to bed from 22.8.97 to 20.9.97. He was prevented from appearing before the Hon'ble Mr. Justice, R. Dayal and Mr. Justice, Amitava Lala on 2.9.97 when the matter was called on. He was not aware at all about the said order of dismissal before 14.7.98.

3. It appears that no reply to the application for restoration was filed before the High Court and the application was not opposed on the facts pleaded therein. Even in the counter affidavit filed in this Court the fact that the appellant Counsel has fallen ill is not disputed. What is stated in the counter affidavit filed here is as under:-

3(b) In the list of dates to the SLP, under the date 18.7.98, it is stated in the following words:-

Thereafter, Shri Ashok Kumar Roy concerned Advocate, fell seriously ill being down with cardiac problems and remained bed-ridden continuously. Petitioner also attended his advocate and for that was not in a position to take any immediate steps in the matter. Petitioner had positive information that, in the event the matter comes up for hearing the advocate would be communicated by the office of the Hon'ble Court and he was to get such information immediately as he was attending his advocate.

(c) From the aforesaid pleadings, the admitted position is that the petitioner knew from the beginning that his learned Advocate was ill, had suffered heart attacks, and right from the beginning of the ailment not only did he know about the same, he was almost a daily visitor to the learned Advocate by attending on him.

(d) If the petitioner knew about the ailment since after the learned Advocate fell ill, he was required to also take steps and keep information about his pending case. The petitioner does not say that he was suffering from any disability preventing him from looking after his case. Therefore, he cannot overcome the fact that he was guilty of laches and negligence in prosecuting his case before the High Court.

4. It is respectfully submitted that if only lawyer's ailment, even though known to the client is a ground for condonation of delay in any application for restoration of cases, dismissed in default, for

such a long period then the argument of delay, negligence and laches of the petitioners available to the respondents would no more be available.

4. Having regard to the fact set out above, we think that the High Court should have condoned the delay in filing the application for restoration and should not have dismissed the application summarily. We allow the appeal set aside the impugned judgment of the High Court, condone the delay in filing the restoration application and restore the FMAT No. 1413/1987 on the file of the High Court. The High court is requested to dispose of the writ appeal on merits. No order as to costs.