

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD****MISC. APPLICATION NO. 363 OF 2019****IN****MISC. APPLICATION NO. 437 OF 2017****IN****ORIGINAL APPLICATION NO. 201 OF 2006****(Subject – M.A. For Restoration)****DISTRICT : AURANGABAD**

Shri Govind S/o Dewaji Chavan,)
 Age : 65 years, Occu. : Retired,)
 Permanent, R/o. C/o. B.M. Rathod,)
 “Madhuwansh”, Plot No. 431,)
 N-3, CIDCO, Behind Deogiri Hotel,)
 Aurangabad, At Present R/o Plot No. 2,)
 Vishal Nagar, Near Deep Nagar,)
 Wadgaon Road, Yavatmal.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
 Through the Presenting Officer,)
 Maharashtra Administrative Tribunal,)
 Mumbai, Bench at Aurangabad.)
- 2) **The Secretary,**)
 Urban Development Department,)
 Mantralaya, Mumbai – 400 032.)
- 3) **The Director of Town Planning,**)
 Central Administrative Building,)
 Pune.) .. **RESPONDENTS**

APPEARANCE : Shri S.D. Joshi, Advocate holding for Shri R.B
 Ade, Advocate for the Applicant.

: Smt. M.S. Patni, Presenting Officer for
 Respondents.

CORAM : **B.P. PATIL, ACTING CHAIRMAN.**

RESERVED ON : **05.09.2019.**

PRONOUNCED ON : **16.09.2019.**

ORDER

1. The applicant has filed the present Misc. Application No. 363/2019 for restoration of M.A. No. 437/2017 in M.A. St. 1563/2017 in O.A. No. 201/2006 by recalling the order of dismissal passed on 26.07.2019.

2. The applicant has filed O.A. No. 201/2006 before this Tribunal challenging the orders dated 10.05.2004 and 13.05.2004 passed by the respondents. The respondents therein filed their affidavit in reply and thereafter, the matter was fixed for hearing. At the time of filing of the O.A. No. 201/2006, the applicant was posted at Gondia. In the year 2006, he was transferred to Gadchiroli. Thereafter, he was transferred to Thane. In the year 2008, he was transferred to Amravati. In the meantime, in the month of June 2012, he was retired from the service from Amravati. Thereafter, he was constantly in touch with his Advocate and he informed him about progress in the matter. After retirement, the applicant visited Aurangabad and approached his Advocate Shri S.N. Pagare and made enquiry about the status of O.A. That time, his Advocate has informed him that the O.A. was pending. Thereafter, also he made enquiry with his Advocate from time to time about the O.A. In the month

of August, 2017, he made enquiry with his Advocate and his Advocate informed that the file was misplaced in the office of this Tribunal. Therefore, the applicant has sent e-mail to this office. In response to email sent by him, the office of this Tribunal informed him that the O.A. No. 201/2006 filed by him was dismissed in default on 31.01.2013. Thereafter, the applicant visited this Tribunal for obtaining certified copy of the order on 09.10.2017 passed by this Tribunal and filed M.A. No. 437/2017 for restoration of O.A. No. 201/2006. It is his contention that his Advocate was not aware about listing of the matter before this Tribunal and therefore, he could not able to attend this Tribunal and this Tribunal dismissed the M.A. No. 437/2017 on 26.07.2019. It is his contention that his Advocate could not able to attend the Tribunal due to ill health of his younger daughter. There was no intentional and deliberate delay on the part of the applicant or his Advocate. It is his contention that his valuable rights are involved in the O.A. and therefore, he has prayed to set aside the order of dismissal passed in M.A. No. 437/2017 on 26.07.2019 by allowing the present Misc. Application.

3. I have heard Shri S.D. Joshi, learned Advocate holding for Shri R.B. Ade, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondents. I

have perused the documents placed on record by both the parties.

4. Learned Advocate for the applicant has submitted that the applicant has filed O.A. No. 201/2006 in this Tribunal challenging the orders dated 10.05.2004 and 13.05.2004 passed in the Departmental Enquiry. He has submitted that the said O.A. came to be dismissed in default on 31.01.2013, but he learnt about the dismissal order passed in the O.A. in the year 2017 and therefore, he has filed M.A. No. 437/2017 for restoration of O.A. No. 201/2006. He has submitted that the said M.A. No. 437/2017 came to be dismissed in default on 26.07.2019 because of the absence of the Advocate of the applicant, as the younger daughter of the Advocate of the applicant was ill. He has submitted that there was no intentional and deliberate delay on the part of the applicant or his Advocate and therefore, he has prayed to recall the order of dismissal dated 26.07.2019 passed in M.A. No. 437/2017 and restored it to its original number by allowing the present M.A. No. 363/2019.

5. Learned Presenting Officer has submitted that the applicant has suppressed the material fact. She has submitted

that the M.A. No. 437/2017 was filed by the applicant for condonation of delay of 1710 days caused for filing the application for restoration of O.A. No. 201/2006, which was dismissed in default on 31.01.2013. She has submitted that the M.A. No. 437/2017 had been dismissed in default on 12.06.2018. Thereafter, the applicant has filed M.A. No. 322/2018 for restoration of M.A. No. 437/2017, which came to be allowed and disposed of on 07.09.2018 subject to payment of costs of Rs. 5000/-. After restoration of M.A. No. 437/2017, the applicant and his Advocate remained absent and therefore, the impugned order came to be passed on 26.07.2019 in the said M.A. No. 437/2017. She has submitted that the said fact shows that the applicant or his Advocate remained absent on various dates in M.A., as well as, in O.A. and therefore, the impugned order came to be passed. She has submitted that there was intentional and deliberate delay on the part of the applicant and there is no just ground for restoration of M.A. No. 437/2017 and therefore, she has prayed to reject the present M.A. No. 363/2019.

6. On perusal of the record, it reveals that the applicant has filed O.A. No. 201/2006 on 16.01.2006. When the O.A. came for hearing, the applicant and his Advocate remained absent and

therefore, the said O.A. came to be dismissed in default on 31.01.2013. The applicant has filed M.A. No. 437/2017 along with M.A. St. No. 1563/2017 in O.A. No. 201/2016 for condonation of delay caused for filing the application for restoration of O.A. No. 201/2006. But the applicant and his Advocate remained absent in M.A. No. 437/2017 and therefore, the said M.A. came to be dismissed in default on 12.06.2018. Thereafter, the applicant has moved an application bearing M.A. No. 322/2018 for restoration of M.A. No. 437/2017 i.e. application for condonation of delay caused for filing the application for restoration of O.A. No. 201/2006. The M.A. No. 322/2018 was allowed on 07.09.2018 subject to payment of Costs of Rs. 5000/-. On depositing the amount of costs, the said M.A. No. 437/2017 was restored to its original number, but thereafter, also the applicant remained absent on frequent dates and therefore, this Tribunal passed the impugned order on 26.07.2019 and dismissed the M.A. No. 437/2017. The entire record shows that the applicant was not diligent in prosecuting the matter. He remained absent on various dates. It shows that he was not interested in prosecuting the matter and therefore, the impugned order came to be passed. Prior to that the sufficient opportunities were given to the applicant to approach

this Tribunal and conduct the matter. Not only this, but on earlier occasion also the order of dismissal has been passed in M.A. No. 437/2017, but it had been recalled. In spite of that the applicant remained absent and therefore, the impugned order has been passed. This fact shows that there was intentional and deliberate delay on the part of the applicant. No justifiable explanation for setting aside the order of dismissal passed in M.A. No. 437/2017 has been given by the applicant. There is no just ground to recall the order dated 26.07.2019 passed in M.A. No. 437/2017. There is no merit in present M.A. Therefore, the present M.A. No. 363/2019 deserves to be dismissed.

7. In view of the discussions in the foregoing paragraphs, the M.A. No. 363/2019 stands dismissed with no order as costs.

PLACE : AURANGABAD.
DATE : 16.09.2019.

(B.P. PATIL)
ACTING CHAIRMAN