

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****MCA No.14/2014****IN MCA NO.15/2014****IN ORIGINAL APPLICATION 477 of 2000**

Dattu S/o Haribhau Atkale,
Aged about 59 years, Occ. Service,
R/o Near Veterinary Hospital,
Ward no.17, Dhantoli, Katol,
District Nagpur-440 010.

Applicant.

Versus

- 1) State of Maharashtra through its
Secretary, Revenue and Forest,
Mantralaya, Mumbai-440 032.
- 2) The Collector, Nagpur.
- 3) Sub Divisional Officer,
Katol Narkhed near Tahsil Office, Katol,
Dist. Nagpur-440 022.
- 4) The Tahsildar,
Narkhed, Tahsil Officer,
Narkhed, Dist. Nagpur.

Respondents.

Shri S.W. Sambre, D.M. Karada, Advocates for the applicant.

Shri P.N. Warjurkar, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this 11th day of July,2017)

Heard Shri S.W. Sambre, Id. counsel for the applicant and
Shri P.N. Warjurkar, Id. P.O. for the respondents.

2. This is an application for condonation of delay in filing restoration application in O.A. No. 477/2000. The said O.A. was dismissed in default on 1/8/2007 and therefore the applicant has filed MCA No.15/2014 for restoration of O.A. However there is delay of 7 years in filing the application for restoration and therefore this MCA No.14/2014 has been filed for condonation of delay in filing restoration application.

3. According to the applicant, he came to know about his dismissal of O.A. late because he met an accident on 5/6/2007 and was admitted in Orthopaedic Hospital at Nagpur for Bilateral fractures and vascular injury on his legs. He has undergone two major surgeries on the legs and the approximate temporary disability was to be tune of 75%. It is further stated that the applicant was unable to walk and to do his day to day work without support of any person and therefore there was delay. It is stated that delay was not wilful and therefore the same may be condoned.

4. In MCA No. 14/2014 the reply-affidavit is filed on behalf of respondent no.2, i.e., the Collector, Nagpur and it is denied that the

applicant was diligent. It is further stated that the applicant's case was not supported with any documentary evidence and the averments in the application are vague.

5. On going through the arguments putforth by the Id. Counsel for respective parties, this Tribunal vide order dated 26/8/2015 was pleased to dismiss the application for condonation of delay holding that there is no valid reason to justify condonation of delay has been made out and that there was inordinate delay in filing MCA for which the applicant was negligent.

6. Being aggrieved by the aforesaid order passed by this Tribunal rejecting the case of the applicant for condonation of delay, the applicant preferred W.P.No.209/2016 before the Hon'ble High Court, Bench at Nagpur. The Hon'ble High Court vide order dated 23/3/2016 was pleased to observe that there is no scope for interference with the impugned order in light of the material placed by the applicant before the Tribunal. The Hon'ble High Court, however, observed as under :-

“On hearing the learned Counsel for the parties, we find that there is no scope for interference with the impugned order, if we consider the order in the light of the material placed by the petitioner before the Tribunal. However, the learned Counsel for the petitioner has pointed out some material in the form of medical reports and other documents to show

that the petitioner was seriously ill till he filed the application for restoration and even thereafter. We prima facie find that the statement made on behalf of the petitioner appears to be correct as the petitioner had met with a serious accident and the petitioner is said to have been partially crippled due to the accident. In the peculiar facts of the case, though we do not find any reason to interfere with the impugned order on the basis of the available material, it would be necessary to take a sympathetic view in the matter and remand the matter to the Tribunal with liberty to the petitioner to file additional documents in support of his application for condonation of delay in filing the restoration application.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order is quashed and set aside. The matter is remanded to the Tribunal with a request to the Tribunal to re-decide the application for condonation of delay after permitting the petitioner to file additional documents in support of the application for condonation of delay.

The learned Counsel for the petitioner states that the additional documents would be tendered before the Tribunal within a period of six weeks. We accept the statement. We request the Tribunal to decide the application at the earliest as the petitioner is still under treatment.”

7. In view of the aforesaid order passed by the Hon'ble High Court the applicant appeared before this Tribunal and filed MCA for allowing him to place on record the documents as per C.A.360/2016 and therefore the document was to be allowed to place on record.

8. In view of the aforesaid facts and observations made by the Hon'ble High Court, it is necessary to see as to what documents the applicant has placed on record as additional evidence.

9. The applicant has placed on record only one document, i.e., a certificate issued by Dr. Prasad Orthopaedic & Maternity Hospital. The said Certificate is signed by Dr. Makarand Dopavkar, Consulting Orthopaedic Surgeon. It is material to note that this Certificate is dated 18/3/2016 and it reads as under :-

"This is to certify that Mr. Dattu Atkale is an operated c/o Bilateral fracture Tibia Fibulae both legs. He has undergone surgery for the same on 5/6/2007 in this Hospital. Due to above mentioned injuries, he is unable to walk longer distances, climb stair cases, prolonged standing etc."

10. Perusal of the aforesaid certificate shows that the applicant was operated on Tibia and Fibulae bones of the applicant on 5/6/2007 in his Hospital. It is merely stated that on consequence of such injuries the applicant was unable to walk long distance, climbing stair cases, prolonged standing etc. The said certificate is very vague in nature. It is not known as to whether the applicant is bed ridden right from the date of surgery on 6/6/2007.

11. From the documents already placed on record which were also appreciated by this Tribunal it will be clear that the applicant was an indoor patient from 5/6/2007 to 12/6/2007 thereafter he was treated in the OPD upto 12/6/2008. No documents were submitted earlier also to show what exact treatment the applicant was taking. Even accepting the Certificate produced after the order passed by the Hon'ble High Court for argument sake it does not seem that the applicant was bed ridden and was not in a position to approach even the legal Advisor. The contents of the Certificate placed on record are vague and it is difficult from the certificate to accept that the applicant was unable to approach the Tribunal or Advocate or was unable to perform his daily perceives. The possibility that the Certificate might have been procured by the applicant just to support his claim cannot be ruled out. The O.A. was dismissed on 1/8/2007 and the application for restoration of O.A. alongwith application for condonation of delay has been filed on 8/5/2014, i.e., almost after 7 years. The medical certificate filed by the applicant after the matter was remanded to this Tribunal is not sufficient to prove that the applicant was really under absolute disability to approach the Tribunal. It is highly improbable that the applicant even did not contact his Advocate about the matter for about 7 years. The applicant has not filed on record affidavit of Dr. Makarand Dopavkar nor has placed on record any documentary

evidence to show as to what treatment was undergoing in the Hospital of Dr. Makarand Dopavkar. The document placed on record is dated 18/3/2016 and no documentary evidence has been placed on record to show as to what medical treatment the applicant has undergone from 5/6/2007 onwards till the date of filing of application for restoration.

12. Considering the aforesaid circumstances, I am satisfied that the applicant has failed to prove on record as to why he was unable to approach the Tribunal for more than 7 years so as to file application for condonation of delay in filing restoration application of O.A. No. 477/2000. In spite opportunity given to the applicant, he could not place on record convincing documentary evidence to justify delay in filing application for restoration.

13. I, therefore, do not find any merit in the MCAs. Hence the following order :-

ORDER

MCA No. 14/2014 and consequently MCA No.15/2014 stand dismissed with no order as to costs.

(J.D. Kulkarni)
Vice-Chairman (J).