

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P No.S-4022 of 2012

Date	Order with signature of Judge
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Disposed of case

For hearing of CMA 11928/18 (Restoration)

23.10.2018

Petitioner present in person.
Mr. Sanaullah Noor Ghouri Advocate for Respondent/ SUPARCO.
Shaikh Liaquat Hussain, Assistant Attorney General.

The instant Petition was dismissed for non-prosecution by this Court vide Order dated 01.02.2018. After two days Petitioner filed Application for restoration/recall of Order dated 01.2.2018 under Section 151 C.P.C. bearing CMA No. 4512/2018. The said application was fixed on 16.03.2018, on which date the Petitioner was called absent and the aforesaid application was dismissed on account of non-prosecution. Petitioner being aggrieved by and dissatisfied with the order dated 16.03.2018 preferred application bearing CMA No. 11928/2018 for restoration of CMA No. 4512/2018 after lapse of four months 9 days months.

Today Petitioner present in person has submitted that aforesaid CMA was dismissed on 16.03.2018 in his absence, without issuance of intimation notice and hearing as provide under Article 10-A of the Constitution. He further submitted that his non-appearance on the aforesaid date was neither deliberate nor intentional; that he was not aware of the date of hearing i.e. 16.03.2018 therefore he could not appear before this Court to pursue the matter. Petitioner next added that the matter pertains to public interest/litigation and he has been appearing in this matter to pursue the same since last 5 years. He prays

for restoration of CMA No. 4512/2018 and the matter may be decided on merits.

Mr. Sanaullah Noor Ghouri, learned counsel for the Respondent/SUPARCO has waived the notice and argued that the listed application is barred by 4 months 9 days and the Petitioner has no explanation to offer. He prays for dismissal of the instant application.

We have heard the Petitioner, who is present in person and learned counsel for the Respondent/SUPARCO and perused the material available on record.

Record reflects that the instant Petition was dismissed on account of non-prosecution vide Order dated 01.02.2018 and on 06.02.2018 Petitioner moved listed application for restoration of Petition to original position within time. The restoration application is supported by affidavit of the Petitioner with certain explanations. We have noted that the matter was fixed on 16.03.2018 for hearing of Restoration Application (CMA No. 4512 of 2018) on which date the Petitioner was called absent and the aforesaid application was dismissed on account of non-prosecution. The only plea, which the Petitioner has taken that on the very day when the matter was fixed for orders on CMA No. 4512/2018 he had no intimation for fixation of the aforesaid CMA. Bailiff's Report dated 31.01.2018 shows that the notice of the matter was served upon the son of the Petitioner namely Muhammad Qasim for fixation of the matter on 01.02.2018 but he was called absent and the Petitioner within two days filed the application being CMA No. 4512/2018 for restoration of the instant petition. Since the Petitioner is appearing in person and record does not reflect as to whether he had any intimation of fixation of CMA NO. 4512/2018 on 16.03.2018. We are cognizant of the fact that very application for restoration as discussed supra, which is not supported by condonation of delay, however the explanation offered by the Petitioner is supported by sufficient material for condonation of delay.

In view of above we are of the opinion that the matter should be decided on merits rather than dismissal on account of non-prosecution. Therefore, the listed application bearing CMA No. 11928/2018 is allowed and the matter is restored to its original position. However it is made clear that if on the next date of hearing the Petitioner does not proceed with the instant Petition, the matter shall be proceeded and decided in his absence on the basis of material available on record.

Adjourned to 13.11.2018.

JUDGE

JUDGE

Shafi Muhammad P.A