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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Mushir Alam
Mr. Justice Mazhar Alam Khan Miankhel

Civil Petition No.609/2017

(On appeal from the order dated 2.02.2017 passed
by the Lahore High Court, Lahore in C.M.
Nos.1&2/16 in FAO No.518/14)

Ms/ SKB-KNK Joint Venture Contractors
through its Regional Director

Petitioner

Versus

Water and Power Development Authority and others

Respondents

For the Petitioner:

Ch. Imran Hassan Ali, ASC
Mr. Ahmed Nawaz Ch. AOR (Absent)

For Respondent No.1:

Mr. Hamood ur Rehman, ASC

For Respondent Nos.2-3:

Nemo

Date of Hearing:

13.02.2018

ORDER

Mazhar Alam Khan Miankhel, J.- The petitioner herein has questioned the order dated 2.02.2017 whereby the High Court while accepting the civil miscellaneous, filed by the respondent, restored the original FAO No.518/2014 by condoning a delay of more than six months.

2. Brief facts of the case are that dispute between the petitioner and respondent was referred for arbitration and after submission of award dated 4.10.2011 by the Umpire in the Court, the respondent raised certain objections against the award but the trial Court while making the award Rule of the Court, granted a decree dated 20.06.2014 in favour of the present petitioner by dismissing the objection of respondent. The respondent challenged the said decree by way of an appeal wherein notice was issued to the other side by the High Court after preliminary hearing but on the next

date of hearing the appeal of the respondent was dismissed for non-prosecution vide order dated 17.09.2015. An application for its restoration was filed on 26.03.2016 alongwith a separate application for condonation of delay. The High Court, after hearing both the parties, allowed the said application vide the impugned order dated 2.02.2017 by condoning the delay in filing the said application for restoration.

3. Learned counsel for the petitioner was heard on 30.01.2018 and a notice was issued to the respondent. Today after hearing the learned counsel for the parties and perusal of the record it transpired that the appeal of the respondent was dismissed for non-prosecution on 17.09.2015 whereas the learned counsel for the respondent kept on appearing before the Executing Court on various dates as shown in the earlier order of this Court dated 30.01.2018 and lastly filed an application for restoration of the appeal on 26.03.2016 alongwith a separate application for condonation of delay caused in filing of application for restoration. Perusal of the record would further reveal that the application for restoration of appeal, on the face of it, was barred by law of limitation. Though a separate application for condonation of delay was also filed by the learned counsel for the respondent and cause for non-appearance on the fateful day was the illness of the learned counsel and the same was also supported by an affidavit but perusal of both the affidavits, one alongwith restoration application and the other with application for condonation of delay, would reveal that both these affidavits were filed for restoration of appeal and not for condonation of delay which reflect the casual attitude of the learned counsel for the respondent before the High Court. The main reason for accepting the application for restoration of appeal by the High Court was the affidavit of the learned counsel and no doubt that normally such affidavits are given due weight by the Courts if the same are based on true facts. With the application for condonation of delay

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no medical certificate of the learned counsel is attached reflecting his duration of illness. His applications for restoration and condonation of delay do not reflect that what was the sufficient cause which precluded him from submission of said applications within the prescribed time. The record of the case, as pointed out by the learned counsel for the petitioner, reflects that the learned counsel for the respondent kept on appearing before the learned trial Court for a couple of dates as shown in the earlier order of this Court dated 30.01.2018 which means that the learned counsel for the respondent was fully aware of dismissal of his appeal for non-prosecution. When confronted, the learned counsel for the respondent was unable to explain the said situation. It is settled by now that government departments are also treated like an ordinary party before the Court and the same treatment has to be given to the government department as is given to the ordinary litigants. Besides the above, in affidavits no sufficient cause was given by the learned counsel for his non-appearance or non-appearance of the representative of the department so the limitation cannot be taken as a mere technicality as by expiry of period of limitation, valuable rights accrue to the other party.

4. We, in the circumstances, left with no option but to convert this petition into appeal and allow the same.

The above are the reasons for our short order of even date which reads as under:-

“ For the reasons to follow this petition is converted into appeal and allowed.”