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C.A.No. 149 OF 1998
ITEM NO.110COURT NO.7SECTION XV

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.149/1998.

EXECUTIVE ENGINEER, ROAD & BLDG.DEPTT.

...
APPELLANT (S)

VERSUS

SECRETARY, SMM SANGH & ORS.

...
RESPONDENT (S)

Date :
24/07/2003
This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s)M/S Jatin Javeri,Monica Bapna,
Hemantika Wahi,Advs.

For Respondent (s)Mr.Mahendra Anand,Sr.Adv.
M/s AP Medh,Rauf Rahim,Advs.

UPON hearing counsel, the Court made the following
O R D E R

Heard the learned counsel for the parties for some time. The appeal is allowed in terms of the
signed order. No costs.

(Naresh Kumar)
Court Master

(VP Tyagi)
Court Master

[The signed order is placed on the file.]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

EXECUTIVE ENGINEER, ROAD & BLDG.DEPTT.

...

APPELLANT (S)

VERSUS

SECRETARY, SMM SANGH & ORS.

...

RESPONDENT (S)

O R D E R

By the judgment dated 18th September, 1992, the High Court allowed the civil application (S.C. A.No.1889/1988) that had been filed by respondent no.1 claiming relief against the present appellant. The arguments in the application before the High Court were heard in absence of the counsel for the appellant who was the respondent there. It is not in dispute that only counsel for the applicant was heard and Rule made absolute. On 26th March 1993 an application was filed by the appellant (MCA No.1029/1993) in S.C.A. 1889/1988 seeking recalling of the order dated 18th September, 1992 and hearing the matter afresh. It was, inter alia, stated in the application that the appearance of Government counsel had been filed on 31st December, 1991 but his name was not shown in the Board when the application was notified for final hearing. The application has been dismissed by impugned order dated 12th August, 1994, primarily on the ground that there was delay in filing of the application which had not been explained satisfactorily and, therefore, it cannot be condoned. The order does not show as to the number of days by which the application had been delayed for which condonation was being sought. A perusal of the application, however, shows that the applicant sought condonation of 13 days delay. The High Court held that the order dated 18th September, 1992 had been served in the office of the appellant, namely, Executive Engineer, Roads & Building Department, Rajkot, on 11th February, 1993 and the application was filed on 26th March, 1993. From the perusal of the order it does not give any such reason which have led to refusal to condone delay of 13 days in the facts and circumstances of the case. In our opinion, it is an amply fit case where condoning the delay, the application (SCA 1889/1988) should have been heard and decided afresh after hearing both the parties including counsel for the present appellant. In this view, we set aside the impugned order, condone the delay, recall the order passed ex-parte against the appellant on 18th September, 1992 in SCA No.1889/1988 and direct the fresh decision of the said application. In case, pursuant to the order dated 18th September, 1992, employees have been granted any relief the same shall continue till fresh decision of the matter. The appeal is allowed in above terms. No costs.

.....J.
(Y.K. SABHARWAL)

.....J.
(B.N. AGRAWAL)
New Delhi,
July 24, 2003.