

**BEFORE THE PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR
COURT-II, ROUSE AVENUE, DISTRICT COURT COMPLEX,
DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-2/23/2021

M/s. N1 Media Consultancy (P) Limited

Appellant

VS.

APFC/ RPFC, Noida

Respondent

ORDER DATED :-31/1/2022

Present:- Shri K.K. Pandey, Ld. Counsel for the Appellant.
Shri. S.N. Mahanta, Ld. Counsel for the Respondent.

This is an application filed by the petitioner who was the appellant of the captioned appeal invoking the provisions of Rule 21 of the Tribunal (Procedure Rules) read with sec 151 of CPC, praying recall of the order dt 13.12.2021 and restoration of the dismissed appeal to its original no in the interest of justice.

Copy was served on the counsel for the respondent and the matter was heard on 3.1.2022.

The appellant has stated that the appeal was last listed in the cause list of the Tribunal on 25.11.2021, when Adv Saurav Munjal had appeared and participated in the hearing. On that day the Tribunal, in view of the office note that the appeal has been filed after inordinate delay, directed that the matter be heard on 13.12.2021 on the delay condonation application of the appellant. But inadvertently, the counsel noted the date in his diary as 23.12.2021 instead of 13.12.2021, which was nothing but a human error. On 23.12.2021 cause list of the Tribunal when the matter was found not listed the counsel for the appellant made inquiry and learnt about the order dt 13.12.2021 by which the appeal has been dismissed as time barred. The appellant has submitted that for such dismissal the appellant has been deprived of explaining the circumstances leading to delay in filing the appeal. He has strong and convincing grounds to canvass in this regard. More over a party to a litigation can not be punished for the fault committed by his counsel in conduct of the case. To support his contention, he has relied upon several judgments of the Hon'ble SC including the case of Rafiq & another vs Munshi Lal decided on 16th April 1981, wherein the Hon'ble court have held that

“it is not proper that an innocent litigant, after doing everything in his capacity to effectively participate in the proceeding by entrusting the case to his advocate, should be made to suffer for the inaction ,deliberate omission or misdemeanour of his agent”

Thus the appellant has prayed for recall of the order dt13.12.2021.

In his reply the learned counsel for the respondent submitted that the delay condo nation application has been decided on merit. This being an order passed before the lockdown on account of out break of Covid and since the limitation had run out before the lockdown period, there is no merit in the application for delay condo nation and the petition is liable to be rejected.

On hearing the argument advanced by the learned counsels it appears that the delay condo nation petition was heard and disposed of on 13.12.2021 in absence of the counsel for the appellant for wrong noting of the date of adjournment which is nothing but a human error. For such error on the part of the counsel, the litigant should not suffer as the courts exist to serve the cause of justice and not to punish a party for the fault committed in conduct of the case.

The petition filed under Rule 21 of the Tribunal rule is thus allowed and the order dated 13.12.2021 is hereby set aside and the appeal is restored to file. Call on 17.02.2022 for hearing on the delay condonation petition before admission of the appeal.

(Presiding Officer)