

**(2012) 01 AHC CK 0779**

**Allahabad High Court**

**Case No:** First Appeal from Order No. 4317 of 2011

M/s. Kesarwani Zarda Bhandar

APPELLANT

Vs

Subhash Chandra Kesarwani

RESPONDENT

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**Date of Decision:** Jan. 2, 2012

**Citation:** (2012) 5 ADJ 707

**Hon'ble Judges:** S.U. Khan, J

**Bench:** Single Bench

**Advocate:** Umesh Chandra Kesarwani, for the Appellant;

**Final Decision:** Allowed

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### **Judgement**

S.U. Khan, J.

Heard learned counsel for the appellant. As the restoration application of the appellant has been rejected as not maintainable by Copy Right Board through impugned order dated 5.4.2011 without even issuing notice to the opposite party hence this appeal is being finally decided without issuing notice to the respondent in this appeal. The main matter was dismissed in default by the Bench of Copy Right Board on 30.9.2010 for the absence on 28.6.2010. It is very strange that three members signed on three different dates i.e. on 13.9.2010, 14.9.2010 and 20.9.2010 and thereafter date 30.9.2010 was written at the bottom of the order. Certified copy of the order is on pages 16 and 17 of compilation.

2. Through the impugned order dated 5.4.2011 restoration application seeking recall of order dated 30.9.2010 dismissing the main matter in default has been rejected on the ground that Board has got no power to review. The order passed by the Copy Right Board is patently erroneous in law. It is correct that a judgment passed on merit cannot be reviewed by any Court or authority unless power of review is either specifically conferred or the authority which has decided the matter is a Court having plenary powers like High Court while hearing writ petitions. However, every tribunal has got inherent power to dismiss a case in default in the absence of applicant and to restore the same afterwards if sufficient cause for

absence is made out vide [Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others](#),. Accordingly, impugned order dated 5.4.2011 is set aside. Copy Right Board is directed to decide the restoration application on merit after issuing notice to the other side.

Incidentally the observation of the Copy Right Board in its order dated 30.9.2010 that regarding eligibility of a counsel to appear before the Board clarification from Bar council of India was not produced does not commend it self to this Court. Unless there is specific bar, any advocate can address Court, Tribunal or a Board where advocates are permitted. The observation of the Copy Right Board to the effect that through earlier order it "directed the counsel on both the sides to move the Bar Council of India for seeking true import of the rule." is quite strange. If the rule required interpretation, the Copy Right Board should have interpreted it. It had absolutely no jurisdiction or authority to refer the matter of interpretation to the Bar Council.

Appeal is accordingly, allowed as above, Copy Right Board is directed to decide restoration application very expeditiously.