

**Court No. - 52**

**Case :-** WRIT - C No. - 37143 of 2023

**Petitioner :-** Rameshwar And 3 Others

**Respondent :-** State Of U.P. And 13 Others

**Counsel for Petitioner :-** Bhanu Prakash Verma

**Counsel for Respondent :-** C.S.C.

**Hon'ble Saurabh Srivastava,J.**

1. Heard Shri Bhanu Prakash Verma, learned counsel for the petitioners and Shri Dhnanjay Singh, learned standing counsel for the State respondents.

2. The case of the petitioner is that private respondents have instituted a suit for partition under Section 176 U.P.Z.A.&L.R. Act on 29.5.2009 before respondent no.3, which was decreed by order dated 4.5.2010. Being aggrieved with the order dated 4.5.2010 passed by respondent no.3 petitioners preferred an Appeal No.11 of 2010/11 before respondent no.2. The appeal filed by the petitioner was dismissed in default on 17.12.2013, 7.4.2016, 21.09.2017 and 8.2.2018. Petitioner filed restoration application which too was dismissed in default on 12.6.2018. Petitioner again preferred restoration application which was dismissed by the impugned order dated 3.4.2023. Petitioners challenged the order dated 3.4.2023 by instituting the instant writ petition for restoration of appeal.

3. As a last opportunity the appeal preferred by the petitioner may be heard once again by respondent no.2 without granting any adjournment in the matter but after due opportunity of hearing afforded to all concerned and the same shall be decided within six months from the date of production of certified copy of the order, it is however made clear that the adjudication over the appeal shall be strictly on merits by the respondent no.2.

4. In view of the aforementioned facts and circumstances and without interfering in the order dated 3.4.2023 passed by respondent no.2 is hereby

quashed. Matter is remitted back to respondent no.2 to decide afresh on the basis of merits of the matter.

5. The appeal may be restored to its original number and the same shall be decided as expeditiously as possible preferably within a period of four months from the date of production of certified copy of this order, after affording due opportunity of hearing to all the concerned and affected parties.

6. Writ petition **allowed** accordingly.

**Order Date :-** 17.11.2023

Rakesh