

Court No. - 37

Case :- WRIT TAX No. - 1294 of 2023

Petitioner :- Pradeep Kumar And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Dileep Kumar Srivastava

Counsel for Respondent :- C.S.C., Shashi Kant Upadhyay

Hon'ble Ajay Bhanot, J.

Heard Shri Dileep Kumar Srivastava, learned counsel for the petitioners, Shri Shashi Kant Upadhyay, learned counsel for the respondents No.2 and 3 and Shri Bipin Kumar Pandey, learned Additional Chief Standing Counsel for the State.

The petitioners filed an appeal under Section 160 of the U.P. Nagar Mahapalika Act, 1959 assailing the assessment of the house tax which was registered as Tax Appeal No.21 of 2005 (Pradeep Kumar and others v. Nagar Palika and others). The Tax Appeal No.21 of 2005 was dismissed for non prosecution on 25.01.2016. The petitioners preferred a restoration application on the same date i.e. 25.01.2016. The restoration application has been rejected by the Upper Zila Adhikari (Administration), Deoria by the order dated 24.03.2023. The appeal against the order dated 24.03.2023 was rejected on 16.10.2023.

The petitioners have assailed the said orders dated 24.03.2023 and 16.10.2023.

The appellate court rejected the restoration application

filed by the petitioners for recalling the order dated 25.01.2016 and affirmed the order passed by the authority of first instance dismissing the restoration application on two grounds.

The petitioners contended that they were present in the court on 24.03.2023 but the records were not produced before the learned appellate court. The learned appellate court has rejected the submission on the footing that the case diary indicates that the matter was listed at Serial No.31 on 24.03.2023. Secondly, the learned appellate authority has also disbelieved the illness of the petitioners on the basis that as medical certificates were appended.

In the facts of the case, this Court finds that though the matter was listed before the appellate authority, there is no finding that the records were indeed produced before the appellate authority on the date fixed when the matter was called for hearing. The finding consequently is perverse.

The ground of illness taken can be established by the litigant without producing medical certificates. There are many occasions when persons use homemade remedies for curing illness. Hence rejection by the appellant authority of the petitioners' claim of ill health is illegal and perverse.

Considering the time period in which the petitioners approached the learned appellate authority, it is evident

that the learned appellate authority adopted a pedantic approach to the issue of illness which clearly led to miscarriage of justice. From the records, it is evident that the petitioners have been diligent in prosecuting the appeal. Substantive rights of the appellant are the subject matter of appeal and ought to be decided on merits.

The courts /quasi judicial authorities always endeavour to adjudicate matters on merits particularly when substantive rights of the parties are engaged. Non suiting the parties on technical grounds and shutting the doors of justice to them are always a measure of last resort. Traditionally the courts have adopted a liberal approach while considering delay condonation applications when the delay is not inordinate and subject to the facts and circumstances of the case.

In the wake of the preceding discussion, the impugned order dated 24.03.2023 and the order dated 16.10.2023 are arbitrary and unsustainable in law.

The impugned order dated 24.03.2023 and the order dated 16.10.2023 are liable to be set aside and are set aside. The restoration application is liable to be allowed and is allowed.

The tax appeal is restored to its original number.

The matter is remitted to the learned appellate authority for fresh consideration on merits in accordance with law.

The appellant authority shall decide the appeal preferably within a period of three months from the date of receipt of a certified copy of this order.

The writ petition (tax) is allowed.

Order Date :- 28.11.2023

Ashish Tripathi