

Court No. - 17

Case :- WRIT - C No. - 1006176 of 2009

Petitioner :- Vibhuti Narayan And Ors.

Respondent :- Uma Shanker And Ors

Counsel for Petitioner :- M.L.Yadav, Anand Kumar Giri, Dhiraj Chaurasiya, Pankaj Kumar Verma

Counsel for Respondent :- C.S.C., Mayank Pandey

Hon'ble Alok Mathur, J.

Order on **Civil Misc. (Amendment) Application No. 158596 of 2021**

1. Present amendment application has been filed seeking amendment in the memo of writ petition.
2. No objection has been filed by the respondents to the amendment application.
3. Accordingly, amendment application is allowed. Learned counsel for the applicant is directed to make necessary amendment in the memo of writ petition during course of the day.

Order on **Writ Petition**

1. Heard Sri Dhiraj Chaurasiya, learned counsel for the petitioners.
2. By means of present writ petition the petitioners have challenged the order dated 19.09.2009, passed by the District Judge, Ambedkar Nagar there by dismissing the appeal preferred by the petitioners against the order dated 22.11.2007 thereby recall application for recall of order dated 22.11.2007 was rejected.
3. It is submitted by learned counsel for the petitioners that the suit was listed on 22.11.2007, on which date learned counsel for the petitioners could not appear before the Court and consequently the said case was dismissed for want of prosecution. It is submitted that petitioners had filed civil Suit No. 96 of 1986 - Vibhuti Narayan Vs. Kamta before the Civil Judge (Junior Division), Ambedkar Nagar on the ground that disputed property of the petitioners on which the petitioners are in possession since time of their ancestors is used as "Sahan"

and also that trees are standing on the said land and the respondents are trying to dispossess the petitioners from the said land. The said civil Suit was dismissed on 16.08.2004, against which the petitioners filed Civil Appeal No. 15 of 2005 - Vibhuti Narayan Vs. Umashankar which was also dismissed for want of prosecution on 22.11.2007.

4. An application for recall of order dated 22.11.2007 was preferred by the petitioners before the District Judge on 04.01.2008 with some delay. The said application was accompanied with an application for condonation of delay. The petitioners were informed that the next date fixed in the case was 18.12.2007 and when they reached in the Court they found that the case was dismissed for want of prosecution on 22.11.2007 and immediately thereafter requested their learned counsel to file recall application. In the application for recall it was stated that non appearance of learned counsel for the petitioners was unintentional and due to the reasons beyond their control, learned counsel could not appear on the said date and a prayer for recall of order and for restoration of the appeal was made.

5. The District Judge while rejecting the application for recall preferred by the petitioners has considered the fact that on numerous previous occasions learned counsel for the petitioners has not put in appearance and accordingly the matter was adjourned. It further stated that no evidence was filed by the petitioners to show that in their learned counsel's diary instead of 22.11.2007, he has noted 18.12.2007 and in absence of any material, the submissions made on behalf of petitioners cannot be accepted and consequently the application for recall has been rejected.

6. Learned counsel for the petitioners on the other hand submits that the said application was filed only with a delay of one month and 12 days. The reasons for delay in filing the said application for recall have also been adequately explained. It has been stated that case was wrongly noted for 18.12.2007 instead of 22.11.2007 and due to which learned counsel for the petitioners could not appear before the Court on the said date.

7. It is noticed that from the date of knowledge of the said order, the application for recall was filed within time. This Court is of the considered view that while considering the applications for recall liberal approach has to be taken by the Courts. The submissions made by learned counsels should have been accepted with regard to the fact that date of listing of the case was wrongly noted in the diary of learned counsel(s). There is no reason to believe otherwise. This Court is also of

the considered view that delay in filing the recall application was merely of one month which could not be considered as great delay so as to prejudice the rights of other parties.

8. In the light of above, order dated 19.09.2009 is set aside. The appeal is restored to its original number.

9. The writ petition is **allowed**.

Order Date :- 11.10.2023

A. Verma

(Alok Mathur, J.)