

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.386 of 2014

In

First Appeal No. 79 of 1996

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1. Triveni Prasad Son of Late Damri Ram
2. Surya Prasad @ Suraj Prasad
3. Bharat Prasad
4. Satish Prasad All 2 to 4 are son of Triveni Prasad All are resident of Mohalla - Kashwa Dehri P.S. Dehri, District - Rohtas

-Defendants/Respondents/Petitioners.
Versus

1. Ishwar Prasad
2. Sri Bhagwan Prasad Both Sons of Bishwanath Prasad All are resident of Mohalla - Trigun Dehri, P.S. Dehri, District - Rohtas

-Plaintiffs/Appellants/Opp.Parties.

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Appearance :

For the Petitioner/s : Mr. Suresh Mishra
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 16-07-2015 Heard the learned counsel for the petitioners in the interlocutory application (I.A.No.8656/2014) praying for condonation of delay as well as on the maintainability of the present review application.

As per the office report, there is delay of 2 years, 3 months and 5 days in filing this review application. It has been stated by the petitioners in the interlocutory application that the Special Leave Petition (C) No.22478/2013 was preferred by the petitioners against the judgment and decree of this Court in F.A.No. 79/1996 but the special leave petition was dismissed by the apex court on 01.08.2013. This review application has been

filed on 21.11.2014 after the delay as abovementioned, and the explanation furnished in this regard is that the petitioners have been collecting documents/applications and making consultation with learned advocate for obtaining appropriate opinion after the dismissal of the petition for special leave to appeal by the apex court.

The learned counsel for the petitioner has submitted that as the petitioners have been pursuing the remedy available to them in accordance with law before the apex court, the time spent therein be excluded or accepted as sufficient cause for the purpose of condonation of delay. It has also been submitted that after the dismissal of the special leave petition by the apex court, the time was spent bonafidely by the petitioners in collecting the documents and obtaining legal opinion. It has also been submitted that the present review application for review of the judgment and decree in question is maintainable even after the dismissal of the special leave petition by the apex court and the reliance in this regard has been placed on the decision of the apex court in the case of **Bakshi Dev Raj Vs Sudhir Kumar 2011(3) Civ.C.R. 692(S.C)** and in the case of **Municipal Corporation of Delhi Vs Yashwant Singh Negi ,2013(3)PLJR (SC) 37.**

This review application has been filed for review of the judgment and decree dated 16.07.2012 passed by this Court

in F.A.No.79/1996. The petitioners had preferred Special Leave to Appeal (Civil) No.22478/2013 before the apex court but the same was dismissed by order dated 01.08.2013(Annexure-2). After the dismissal of the special leave petition, the present review application has been filed alongwith prayer for condonation of delay as made in the interlocutory application (I.A.No.8656/2014).

The issue of maintainability of a review application, after condoning the long delay when the petition for special leave to appeal against the judgment and decree has already been dismissed, came up for consideration by the apex court in the case of **K. Rajamouli Vs. A.V.K.N. Swamy, 2001(5)SCC 37**. After considering the earlier decisions in this regard their Lordships have ruled as follows:

*“...Following the decision in the case of **Kunhayammed (2000 AIR SCW 2608: AIR 2000 SC 2587) (supra)** we are of the view that the dismissal of the special leave petition against the main judgment of the High Court would not constitute res judicata when a special leave petition is filed against the order passed in the Review Petition provided the review petition was filed prior to filing of special*



*leave petition against the main judgment of the High Court. The position would be different where after dismissal of the special leave petition against the main judgment a party files a review petition after a long delay on the ground that the party was prosecuting remedy by way of special leave petition. In such a situation filing of review would be an abuse of the process of the law. We are in agreement with the view taken in **Abbai Maligai Partnership Firm (1998 AIR SCW 4061: AIR 1999 SC 1486) (supra)** that if High Court allows the review petition filed after the special leave petition was dismissed after condoning the delay, it would be treated as affront to the order of the Supreme Court...”*

The same issue again arose for consideration before the apex court in the case of **Meghmala Vs G. Narasimha Reddy, 2010 (8) SCC 383**. Their Lordships after taking into notice earlier decisions including the decision in **K.Rajamouli (Supra)** have laid down the law as follows:

25. *“...Thus , the law on the issue stands crystallized to the effect that in case a litigant files a review petition before filing the special leave petition before this Court and it remains pending till the special leave petition stands dismissed, the review petition deserves to be considered. In case it is filed subsequent to dismissal of the special leave petition, the process of filing review application amounts to abuse of process of the court...”*

As noticed above, the present review application has admittedly been filed after the dismissal of the petition for special leave to appeal by the apex court against the judgment and decree in F.A.No.79/1996 and that too after a long delay. In the case of **Bakshi Dev Raj (Supra)**, though it has been held that a review application is maintainable even after the dismissal of the petition for special leave to appeal by the apex court against the judgment and decree under review but it is evident that the earlier two decisions in the case of **K.Rajamouli (Supra)** and in the case **Meghmala (Supra)** were not brought to the notice of the Hon’ble Court. Further, the decision in the case of Municipal Corporation of Delhi (Supra), relied on behalf of the petitioner, has no relevance in the

facts of the present case.

In a recent decision in the case of **Sundeeep Kumar Bafna Vs State of Maharashtra AIR 2014 SC 1745**, it has been observed by their lordships as follows:

15. “...It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam...”

For the aforesaid reasons and discussions, this Court holds that the present review application is not maintainable.

Accordingly, the review application is dismissed as not maintainable.

(V. Nath, J)

Nitesh/-

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