

HIGH COURT OF CHHATTISGARH, BILASPUR

REVP No. 10 of 2008

1. Vallabhdas Nemichand Bawariya S/o Nemichand, aged about 78 years, through Maharashtra Saree Store, Sadar Bazar, Raipur.

---- Petitioner/Applicant

Versus

1. Rameshchand Pandey S/o Mannuram Pandey, aged about 58 years, R/o House No.29, Vallabh Housing Society, Vallabh Nagar, Raipur.

---- Respondent/Non-applicant

For Applicant – None, applicant died.

For Respondent No. – None, respondent died.

Shri Raja Sharma, Advocate for proposed LR's. of respondent.

Order on Board

10/07/2015

1. The applicant is not represented when the case is taken up for hearing.
2. Heard on I.A.No.1/08 for condonation of delay.
3. The application was filed on behalf of the applicant, no one is representing the applicant for the moment.
4. For the purpose of appreciation for I.A.No.1/08, material available in the record are perused also for hearing on admission.
5. The instant review petition preferred after 44 days of its limitation just to review the order dated 28-11-07 passed by this Court in S.A.No.14 of 2007 whereby and whereunder this Court dismissed the second appeal preferred by Vallabhdas Nemichand Bawariya as no substantial question of law arises for determination in that appeal.

6. The reason mentioned for delay does not inspire regarding bonafideness for filing the review. On the other hand, the second appeal was not admitted for hearing under provisions of Order 41 Rule 11 read with Order 42 Rule 1 of the CPC. After dismissal of the second appeal, on the grounds mentioned above, the review petition is not maintainable. The ground available to review the order is not attracted for the instant review petition.

7. In the matter of **Devaraju Pillai v. Sellayya Pillai**¹, Hon'ble the Supreme Court held regarding the scope of review and settled that:-

".....If the party was aggrieved by the judgment of the learned single Judge sitting in Second Appeal the appropriate remedy for the party was to file an appeal against the judgment of the learned single Judge. A remedy by way of an application for review was entirely misconceived and we are sorry to say that the learned single Judge who entertained the application totally exceeded his jurisdiction in allowing the review and upsetting the Judgment of the learned single Judge, merely because he took a different view on a construction of the document...."

Also in **T. Thimmaiah (D) by LRs. Vs. Venkatchala Raju (D) by LRs.**², Hon'ble the Supreme Court while dealing with the matter regarding provisions of Order 47 Rule 1 of the CPC held that :-

Review – Appeal dismissed by High Court – whether High Court justified on review petition in reappreciating facts and allowing appeal – Held, ? No? Principles of Order XLVII, Rule 1 completely ignored – Order on review set aside – Appeal dismissed."

8. On due consideration, as there is no satisfactory explanation for delay for 44 days coupled with the fact that the instant review petition is not maintainable against the order passed by this Court on hearing of the second appeal and the dismissal of the second appeal on the point that no substantial question of law

1 AIR 1987 SC 1160

2 AIR 08 SC (supp.) 93, (2008) 11 SCC 107

arises after due appreciation, I am not inclined to condone the delay also the review petition is not maintainable.

9. Consequently, the review petition filed is hereby dismissed for the reasons indicated above.

10. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE