

206. 05.09.2024
bd. Ct.237

RVW156 of 2023
In C.O. 370 of 2020
IA NO. CAN 1 of 2023
CAN 2 of 2023

Bijoy Krishna Maity @ Bijoy Maity & Ors.

-vs-

Sri Subimal Maity (since deceased)

Represented by Rita Maity & Ors.

Mr. Ajoy Debnath

Mr. Asit Kumar De

Ms. Susmita Senapati ... for the petitioners.

Mr. Tanmoy Mukherjee

Mr. Souvik Das

Mr. Rudranil Das ... for the Opposite parties.

Re: CAN 1 of 2023

This is an application wherein petitioners have sought for condonation of delay of 273 days in filing the instant review application.

Upon hearing learned counsel appearing on behalf of the petitioners and on perusal of the grounds mentioned therein the prayer for condonation of delay is allowed.

CAN 1 of 2023 is accordingly disposed of.

Re : RVW 156/2023

This is a review application wherein petitioners have sought for review of the order passed by this Court on 7.9.2022. Upon hearing this Court was pleased to set aside the impugned

order no. 168 dated 6th December, 2019 and thereby directed the Court below to dispose of the J. Misc. Case No. 35 of 2013 within a period of six months from the date of communication of the order.

Mr. Debnath, learned counsel appearing on behalf of the petitioners submits that this Court failed to appreciate that the order of Civil Court is always binding upon the criminal court, and as such, if J. Misc. Case 35 of 2013 is disposed of before disposal of the criminal case, then pending G.R. Case No. 782 of 2013 will become infructuous. He further submits that said G.R. Case No. 782 of 2013 is completely separate proceedings but both the cases were initiated on a same and identical fact and accordingly he prayed for review of the said order on merit.

Learned counsel appearing on behalf of the opposite parties raised strong objection.

It is settled law that there is always a distinction between “erroneous decision” and “an error apparent on the face of the record”. An error which is not apparent on the face of the record and has to be detected by a process of reasoning is not an “error on the face of record”, justifying Court’s power to invoke jurisdiction under Order XLVII, Rule 1. A review petition has a limited purpose and cannot be allowed to be an appeal in different form.

Having considered the submissions made by both the parties and on perusal of the order

impugned, I do not find merit in the application and as such it is liable to be dismissed.

In such view of the matter, RVW 156 of 2023 is hereby dismissed.

The court below is directed to dispose of the J. Misc. Case no. 35 of 2013 within a period of three months from the date of communication of this order, if it has not been disposed of in the meantime.

Re : CAN 2 of 2023

In view of disposal of review application being RVW 156 of 2023, the stay application being CAN 2 of 2023 stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)