

D/L. 32.
August 25, 2023.
MNS.

WPA No. 1863 of 2008
+
CAN 1 of 2023

Ultra Tech Cement Ltd. and another
Vs.
Union of India and others

Mr. Shounak Mitra,
Ms. Shivangi Thard

... for the petitioners.

Mr. Sanajit Kumar Ghosh

...for the respondents.

Re: **CAN 1 of 2023 (recalling).**

Learned counsel for the petitioners presses the application for restoration and submits that there was sufficient reason for the absence of the petitioners on the relevant date.

Learned counsel for the respondent authorities opposes the application for restoration and places reliance on a purported communication dated June 26, 2023, which was issued subsequent to the dismissal of the writ petition for default, whereby the respondent authorities requested the petitioners to arrange to pay the amount, which is challenged in the writ petition, along with interest payable thereon.

Learned counsel for the respondent authorities places reliance on the judgment of *State of Uttar Pradesh Vs. Shri Brahm Datt Sharma and another* reported at AIR 1987 Supreme Court 943.

It is contended on the basis of the said judgment that in view of the subsequent cause of action having arisen by issuance of a demand by the Eastern Railways for the amount-in-question subsequent to the dismissal for default, the stale cause of action cannot now be revived.

In so far as the *Brahm Datta* (Supra) judgment is concerned, the same pertains to a different proposition altogether, than that involved in the present case. There, the order of the High Court was held not to be sustainable since the writ petition challenging the order of dismissal had been finally disposed of on August 10, 1984, after which nothing remained pending before the High Court. No miscellaneous application, it was observed, could be filed in the writ petition to revive proceedings in respect of subsequent events after two years. It was held that if the respondent was aggrieved by the notice dated January 29, 1986, he could have filed a separate petition under Article 226 of the Constitution of

India, challenging the validity of the notice as it provided a separate cause of action.

Nothing akin to the said case has happened in the present case.

The writ petition here was dismissed for default on May 4, 2023. By a subsequent letter, the Eastern Railway authorities merely reiterated its demand on the basis of the decision, which has been impugned in the writ petition, claiming to have added the interest component along with the same.

In fact, the communication handed over today indicates that the same merely contains a request, in pursuance of the “decision” of this Court dismissing the writ petition for default, to pay the punitive charge to the tune of Rs.63,52,154/-.

The said communication does not furnish any subsequent cause of action at all, but is a mere reiteration of the cause of action impugned in the writ petition, taking advantage of the dismissal for default. Since the dismissal itself is in question now, the restoration application cannot be said to be barred merely due to issuance of such letter.

That apart, a perusal of the application shows that the petitioners have made out sufficient reasons for being absent on the relevant date.

Accordingly, CAN 1 of 2023 is allowed, thereby recalling the order dated May 4, 2023 passed in WPA No. 1863 of 2008 and restoring the said writ petition to its original file and number.

There will be no order as to costs.

Re: **WPA No. 1863 of 2008**

Let the matter be listed in the monthly combined list of cases for the month of October, 2023.

The interim order, if any, stands revived as on today.

(Sabyasachi Bhattacharyya, J.)