

AD-34  
Ct No.09  
12.04.2024  
TN

WPA No. 26522 of 2022  
IA No: CAN 1 of 2024  
CAN 2 of 2024

Sukhada Tudu  
Vs.  
Union of India and others

Mr. Sukumar Ghosh,  
Mrs. Moumita Ghosh  
.... for the writ petitioner

Mr. Manwendra Singh Yadav,  
Mrs. Saswati Chatterjee,  
Mrs. Satabdi Naskar (Kundu)  
.... for the applicant in  
CAN 2 of 2024

Mr. Asish Kumar Guha,  
Ms. Benazir Ahmed  
.... for the State

Mr. S. Sanyal,  
Mr. R. Bhattacharyya  
.... for the respondent no.12/  
applicant in CAN 1 of 2024

Mr. Prabir Maji  
.... for the respondent no.14

**In Re: IA No: CAN 1 of 2024  
CAN 2 of 2024**

1. Affidavit-of-service filed today be kept on record.
2. Learned applicants in CAN 1 of 2024 and CAN 2 of 2024 take a plea that in the order dated January 25, 2024, it was recorded that a civil suit filed by the writ petitioner challenging the lease concerned was pending. It is submitted that on such premise, it was observed by this court in paragraph nos. 8 and 9 of the order that it would be premature to adjudicate on the issues which are already pending before the civil court.

3. In reality, it is submitted, the suit had already been dismissed on the date when the order was passed. As such, it is submitted that since the order was passed on the basis of suppression of material facts by the writ petitioner, the same be recalled.
4. Learned counsel for the writ petitioner points out that the suit was dismissed for default and not on merits. It is also submitted that the writ petitioner herself has taken out an appeal against the order sought to be recalled bearing MAT No. 391 of 2024 which is now pending.
5. It is contended that the grounds furnished in the applications are not sufficient to recall the order.
6. Although learned counsel for the applicants in the two applications seek to justify the absence of the applicants on the relevant date when the order in the writ petition was passed, it is beyond the scope of the present applications to enter into the same, since the order dated January 25, 2024 was passed on merits, after service of copies of the writ petition on the applicants.
7. There is little or no scope of recalling an order passed in a disposed of writ petition unless the yardsticks of review under Order XLVII of the Code of Civil Procedure are satisfied. In the present case, however, I do not find any such case being made out.
8. Even if the suit-in-question had been dismissed on the said date, as pointed out by learned counsel for the

writ petitioner, since the suit was dismissed for default, although there might be a bar in agitating the issues in a legal action taken out by the plaintiff therein under Order IX of the Code of Civil Procedure, it cannot be said that there was any final adjudication of the rights and contentions of the parties in the suit. Hence, the position recorded in paragraph no. 9 of the order under recall, that it would be premature to adjudicate on the issues, would remain the same, irrespective of the pendency or not of the suit, since there had not been any final and conclusive adjudication on the right, title and interest of the parties by any civil court.

- 9.** Hence, I do not find any scope of allowing the present recall applications.
- 10.** Accordingly, IA No: CAN 1 of 2024 and CAN 2 of 2024 are dismissed on contest without any order as to costs.
- 11.** However, it is made clear that it will be open to the applicants in both the applications to prefer a challenge to the findings of the order under recall in the pending appeal at the behest of the writ petitioner, that is, MAT 391 of 2024 within the principles as embodied in Order XLI Rules 22 and 33 of the Code of Civil Procedure.
- 12.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)