



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). _____ OF 2024
(Arising out of SLP(Civil) No(s). _____ of 2024)
(Diary No(s). 24776/2020)

J.N. PURI

.....APPELLANT(S)

VERSUS

**STATE OF UTTAR PRADESH
(NOW STATE OF UTTARAKHAND) & ORS.RESPONDENT(S)**

J U D G M E N T

Mehta, J.

1. Delay condoned.
2. Leave granted.
3. The instant appeals take exception to the judgment and order passed by the Division Bench of High Court of Uttarakhand in

(i) Writ Petition(M/B) No. 156/1987 dated 8th March, 2019;
and

(ii) Review Application No. 81 of 2020 dated 14th August, 2020.

4. As per the facts emanating from record, the Writ Petition(M/B) No. 156/1987 was filed by the appellant before the High Court of Allahabad challenging the acquisition of his land by the respondents undertaken way back in the year 1987. The appellant claims that he continues to be in possession of the land. The writ petition was dismissed for want of prosecution vide order dated 26th February, 1992.

5. The appellant filed an application dated 23rd March, 1992 seeking restoration of the said writ petition mainly on two grounds, (a) the name of his Advocate Shri G.N. Verma was not printed in the cause list and (b) one of the Hon'ble Judges(Mr. Justice A.P. Singh) before whom the matter was listed had himself as an Advocate filed various applications etc. in the writ petition and thus, the appellant was carrying a bonafide belief that the matter would be deferred on account of recusal.

6. It seems that the said restoration application was not taken up for a significant period of time, upon which the appellant filed yet another Civil Misc. Application No. 34664 of 1999 in Writ Petition(M/B) No. 156/1987 in the year 1999 with a prayer to take

up the restoration application dated 23rd March, 1992 and to pass appropriate order thereupon.

7. Be that as it may, the application preferred by the appellant in the year 1999 was treated to be an application for restoration of the writ petition and the Division Bench of the Uttarakhand High Court rejected the same vide order dated 20th November, 2001, for want of prosecution.

8. The appellant claims to be carrying a bonafide belief that his writ petition was still pending because of certain observations made by the Division Bench of High Court of Uttarakhand in a collateral proceeding being ITA No. 09/2003 titled as *Commissioner of Income Tax Vs. M/s. R.B. Premnath & Sons* wherein it was recorded that the writ petition of the appellant was still pending before the High Court of Allahabad. However, upon finally receiving an information from the Registry of the High Court of Uttarakhand under RTI Act, vide communication dated 4th November, 2019 that the writ petition of the appellant had been dismissed on default on 26th February, 1992, the appellant preferred recalling and restoration application with an application seeking condonation of delay in filing above recalling application, which was dismissed by the High Court of Uttarakhand vide order

dated 8th March, 2019. Further, a review application against above order was filed which also came to be dismissed by order dated 14th August, 2020. These two orders are assailed in these appeals.

9. Mr. Dushyant Dave, learned senior counsel for the appellant submitted that the application for restoration of the Writ Petition(M/B) No. 156/1987 was filed by the appellant on 23rd March, 1992, i.e., within a period of one month from the date of dismissal of writ petition for non-prosecution. It was submitted that the name of the appellant's Advocate was not reflected in the cause list and that one of the Hon'ble Judges constituting the Division Bench before whom the matter was listed, had represented one of the parties in the writ Court and thus, the appellant was bonafide prevented from pursuing the Civil Miscellaneous Writ Petition.

10. Learned senior counsel drew Court's attention to para 5 of the counter affidavit filed on behalf of the State of Uttar Pradesh/Uttarakhand wherein the factum of filing of the application dated 23rd March, 1992 seeking restoration of Writ Petition(M/B) No. 156/1987 to its original number is admitted.

11. Learned senior counsel further submitted that the application filed in the year 1999 which was referred to by the High

Court as a restoration application was as a matter of fact an application seeking passing of appropriate order on the pending restoration application dated 23rd March, 1992. He urged that in the affidavit filed by the appellant in support of the Civil Misc. Application No. 34664 of 1999, the appellant specifically pleaded that despite great efforts, the case had not been listed for consideration of the application for recall of the order dated 26th February, 1992.

12. Per contra, learned counsel appearing for the respondents while supporting the impugned order, vehemently and fervently opposed the submissions advanced by learned counsel for the appellant.

13. Having considered the entirety of facts prevailing on record, we are of the view that the High Court of Uttarakhand was not correct in holding that the application for restoration of the writ petition which was dismissed for non-prosecution vide order dated 26th February, 1992 was submitted with a delay of seven years. As a matter of fact, the application for restoration was filed within a period of one month which fact has been admitted at para 5 of the counter affidavit filed by the State of Uttar

Pradesh/Uttarakhand(respondent no. 1). The said application was never considered on merits.

14. In the facts and circumstances noted above and more particularly the fact that the appellant still claims to be in possession of the land under acquisition, we feel that the writ petition preferred by the appellant should have been heard and decided on merits.

15. In the wake of the above discussion, the impugned orders are set aside. The matter is remitted to the High Court of Uttarakhand which shall restore the writ petition of the appellant and proceed to decide the same on merits expeditiously after giving an opportunity of hearing to all concerned.

16. The appeals are allowed in these terms.

17. Pending application(s), if any, shall stand disposed of.

.....**J.**
(B.R. GAVAI)

.....**J.**
(SANDEEP MEHTA)

New Delhi;
January 29, 2024