

Omdeo Baliram Musale & Ors.
v.
Prakash Ramchandra Mamidwar & Ors.

(Petition for Special Leave to Appeal (C) No. 11258 of 2015)

24 January 2024

[Pamidighantam Sri Narasimha and Aravind Kumar, JJ.]

Issue for Consideration

Whether the High Court erred in dismissing the application for restoration of revision petition (in a suit for declaration) and accompanying application for condonation of delay.

Headnotes

Suit – Suit for declaration related to a property dismissed for default – Application for restoration dismissed – Appeal dismissed – Revision petition dismissed by High Court – Application for restoration of the revision petition and condonation of delay dismissed by High Court – SLP thereagainst.

Held: The facts indicate that the suit that was filed in 1982 never took off as even summons were not issued – The suit that was filed in the year 1982 relates to an alleged unauthorized sale more than four decades back – The suit has virtually become infructuous for more than one reason – SLP dismissed. [Paras 13, 15]

List of Keywords

Suit for declaration; Revision petition; Application for restoration; Condonation of delay; Default; Summons; Infructuous.

Case Arising From

EXTRAORDINARY APPELLATE JURISDICTION : Special Leave Petition No. 11258 of 2015

From the Judgment and Order dated 05.11.2014 of the High Court of Judicature at Bombay at Nagpur in CA (CAO) No. 1109 of 2013 in MCA St. No. 12275 of 2013 in CRA No. 284 of 2003

Digital Supreme Court Reports**Appearances for Parties**

Ms. Jayshree Satpute, Ms. Manju Jetley, Advs. for the Petitioners.

Satyajit A. Desai, Siddharth Gautam, Abhinav K. Mutyalwar, Gajanan N Tirthkar, Vijay Raj Singh Chouhan, Luv Kumar, Ananya Thapliyal, Ms. Anagha S. Desai, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Order**

1. This Special Leave Petition is against the decision of the High Court¹ in dismissing an application for restoration of a Civil Revision Application and the accompanying application for condonation of delay in sheer exasperation. The facts are as follows:
2. A simple prayer was made by the petitioners in a suit for declaration that the property belonging to the joint family, but their father wrongly sold it to third parties through a sale deed in the year 1980.
3. The suit came to be dismissed for default for not paying the process fee for service of notice on the LRs. of defendant no.2. The petitioners therefore filed an application for restoration in 1993.
4. This application for restoration was decided after seven years and the Trial Court on 04.02.2000 dismissed the application on the ground that it was filed under Order IX Rule 9 of the CPC whereas it ought to have been filed under Order IX Rule 4 of the CPC as the suit was originally dismissed under Order IX, Rule 2 of the CPC. The petitioner filed an appeal against this order.
5. After three years, the appeal came to be dismissed on 25.06.2003. The petitioner then filed a revision petition in which the High Court issued notice.
6. While the revision was pending before the High Court, the petitioner was unable to serve respondent no. 8 for a long time due to some issue about change in the names. Having waited for long, High Court passed a peremptory order on 01.12.2005 that if the objections were not removed within a period of two weeks, the revision petition would stand dismissed without reference to the Court.

¹ In CA No. 1109/2013 in MCA No. 12275/2013 in CRA No. 284/2003 dated 05.11.2014.

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7. On 12.12.2005, the petitioner's advocate is said to have prepared an application for change of name of respondent no. 8 and a copy was also served on the respondent's advocate but in the meanwhile the peremptory order came into operation and the revision petition came to be dismissed on 15.12.2005.
8. Despite the dismissal of the revision petition, the petitioner filed the application for change in name of respondent no. 8 on 21.12.2005.
9. The sad story continues. In 2011, i.e. after six years, an M.A. for restoration was filed by the petitioner through his son. The son's affidavit was taken on record. However, the High Court by order dated 03.07.2013 dismissed the M.A. only on the ground that it was not moved by the original party to the revision petition.
10. In view of the above referred order, another application was filed in 2013 by the petitioner himself for restoration of the revision petition and condonation of delay. The High Court by the order dated 05.11.2014, impugned herein, dismissed the application for restoration.
11. The story does not stop here. The petitioner then filed a Special Leave Petition against the above-said impugned order and notice was issued by this Court on 06.04.2015.
12. From 2015, the matter has been pending before this Court. Proceedings in the case indicate that the SLP was listed several times between 2015 and 2024 but could not be heard as notice on some respondents was not complete.
13. The above referred facts indicate that the suit that was filed in 1982 never took off as even summons were not issued. It might not be surprising for lawyers, judges and those who are acquainted with civil court proceedings. The real danger is when we accept this position and continue with it as part of a systematic problem. Until and unless we believe that this situation is unacceptable and act accordingly, the power, authority and jurisdiction of Courts to address simple reliefs of citizens will be consumed and destroyed by passage of time. This is not acceptable at all.
14. There must be a solution, idea and resolve to rectify this situation and ensure that simple, quick and easy remedies are available to correct an illegality for a rightful restitution. We have referred to all this only to take note of what has happened and take steps to rectify it in the time to come.

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15. Coming back to this case, we have noticed that the suit that was filed in the year 1982 relates to an alleged unauthorized sale by father more than four decades back. The suit has virtually become infructuous for more than one reason. The Special Leave Petition is dismissed.
16. Pending application(s) shall also stand disposed of.

Headnotes prepared by: Bibhuti Bhushan Bose

Result of the case:
SLP dismissed.