

(2004) 03 JH CK 0079
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5634 of 2003

Anand Mohan Agarwal and Others

APPELLANT

Vs

Presiding Officer, Debt Recovery Tribunal and Others

RESPONDENT

Date of Decision : 02-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 9

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : R.S. Mazumdar, I. Sinha and N. Pasari, for the Appellant; Rajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Heard Mr. R.S. Mazumdar, learned counsel appearing for the petitioner and Mrs. Rajesh Kumar, learned counsel appearing for the respondents.

2. This writ application under Article 227 of the Constitution of India is directed against the order dated 14.10.2003 passed by Presiding Officer, Debt Recovery Tribunal, Ranchi Whereby he has rejected the application filed by the petitioners for review/ recall of the order dated 5.9.2001.

3. It appears that the respondent-Bank filed Title Mortgage Suit No. 109 of 1986 in the Court of Sub-Judge-I, Dhanbad against the defendants/respondents including father of the petitioners. The said suit was dismissed for default on 6.12.1996. The respondent-Bank filed restoration application, which was registered as Misc. Case No. 6 of 1996. During the pendency of the restoration application defendant No. 5 now deceased died on 28.3.2000. The respondent-Bank filed petition on 30.11.2000 for substitution of legal representatives of the deceased/defendant. In the meantime, the suit and restoration proceeding was transferred to the Debt Recovery Tribunal. The respondent-Bank also filed amendment petition for amending case title of restoration petition. The

substitution petition was allowed by the Debt Recovery Tribunal on 5.9.2001. Petitioner who are the substituted heirs of defendant No. 5 filed petition on 22.7.2003 for recall or setting aside the order dated 5.9.2001 which has been heard and dismissed by the impugned order.

4. Mr. R.S. Mazumdar, learned counsel for the petitioner submitted that the Debt Recovery Tribunal allowed substitution petition and the amendment petition on 5.9.2001 without giving notice and opportunity of hearing to the petitioners. Learned counsel for the petitioner submitted that petitioners have no knowledge about the order passed by the Debt Recovery Tribunal and no substitution could have been made when the suit and the restoration application stood abated.

5. From perusal of the impugned order, it appears that other defendants filed similar application for recall of the order dated 5.9.2001 on the same ground on 24.4.2003. It is only after similar application on behalf of other defendants was rejected by the tribunal petitioners filed the instant application on 22.7.2003 i.e., about 2 years for recall of the order-dated 5.9.2001. In my opinion, the tribunal has rightly rejected the application and refused to recall the order dated 5.9.2001. There is no illegality or irregularity in the impugned order passed by the Tribunal. Moreover, no prejudice would be caused to the petitioner if the impugned order is allowed to stand.

6. For the aforesaid reasons, I do not find any merit in this writ application, which is, accordingly, dismissed.

Application accordingly dismissed.