
(2012) 09 UK CK 0042

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 773 of 2001 (Old CMWP No. 41682 of 2000)

Hakim Rai

APPELLANT

Vs

Consolidation Officer, Kashipur (Camp Kichha) and Others

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2012) 09 UK CK 0042

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : Lokendra Dobhal, for the Appellant; Vijai Lakshmi, Brief Holder, Learned Counsel for the Respondent Nos. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble B.S. Verma, J.

(Restoration Application No. 760 of 2012)

(Delay Condonation Application No. 10323 of 2012)

1. Heard learned counsel for the petitioner on delay condonation application as well as restoration application. This writ petition was dismissed for want of prosecution by order dated 31-7-2008 passed by this Court.

2. The petitioner has moved the restoration application on 24-9-2012. Along with the restoration application, the petitioner has moved an application for condonation of delay, which is supported by an affidavit.

3. I have perused the material placed before this Court.

4. It is pertinent to mention that in the writ petition, the respondent nos. 4 and 5 had not put in appearance despite sufficient service, on 31-7-2008, when the writ petition was dismissed for want of prosecution.

5. In the affidavit accompanying the delay condonation application, the applicant-

petitioner has stated that the writ petition was initially filed before the Allahabad High Court bearing CMWP NO. 41682 of 2000. After creation of new State of Uttarakhand, the present writ petition was transferred to this Court u/s 35 of the U.P. Reorganization Act. At that time, Mr. Sudhanshu Dhulia was engaged as counsel for the petitioner, who was later-on designated as Senior Advocate and subsequently he has been elevated to the Bench. Thereafter, Ms. Gomati Devi was engaged as the counsel for the petitioner in the year 2007. The said Ms. Gomtati Devi left practice after she was married and she had also left this place. The petitioner has specifically stated that the petitioner on or about 1-9-2012 the applicant-petitioner came to know about the fate of the writ petition and that there was no communication between the counsel for the petitioner Ms. Gomati Devi and the petitioner during the intervening period, therefore, the delay in filing the restoration application has occasioned.

6. Considering the peculiar facts and circumstances and the averment made in the affidavit, I am satisfied that the delay in filing the restoration application has been explained satisfactorily by the petitioner, therefore, delay condonation application is allowed. Delay in moving the restoration application is condoned.

7. No prejudice would be caused to the respondents, if the writ petition is heard and decided on merits. In the interest of justice, the restoration application also deserves to be allowed. The order dated 31-7-2008 is liable to be recalled.

8. The restoration application is allowed. The dismissal order dated 31-7-2008 is recalled. The writ petition is restored to its original number along with interim order dated 15-9-2000 passed by this Court.

9. Issue notice to the respondent nos. 4 and 5 returnable within a period of three weeks. Steps be taken within a week. List this petition in the week commencing 5-11-2012.