

(1998) 04 AHC CK 0128

In the Allahabad High Court

Case No : C.M. Review Application NO. 49401 of 1995 In Second Appeal No. 1949 of 1980

Mohammed Ismail alias Chhedhi

APPELLANT

Vs

Haji Hafiz Mohammad Umar

RESPONDENT

Date of Decision : 29-04-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Limitation Act, 1963 — Section 5

Citation : (1998) 4 AWC 469 : (1998) AWC 469 : (1998) RD 661

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : Kailash Nath Tripathi, for the Appellant; Sankatha Rai, for the Respondent

Final Decision : Dismissed

Judgement

D. S. Sinha, J.—Heard Sri Kailash Nath Tripathi. learned counsel appearing for the defendant-appellant-applicant and Shri Sankatha Rai, learned counsel representing the plaintiff-respondent-opposite party.

2. By means of instant application under Order XLVI1, Rule 1 of the Code of Civil Procedure, 1908, reported to be beyond time by 185 days, the applicant urges the Court to review its judgment and decree dated 10th February. 1995, rendered in Second Appeal Wo. 1949 of 1980, Mohammad Ismail v. Haji Hafiz Mohammad Umar.

3. For condonation of delay in moving the restoration application, the applicant has moved application u/s 5 of the Limitation Act, 1963. The plaintiff-respondent-opposite party has filed counter-affidavit objecting the condonation of delay.

4. It is apposite to notice that the judgment and decree sought to be reviewed, was challenged before the Hon'ble Supreme Court of India through SLP No. 17674 of 1995. Mohammad Ismat. v. Hazi Hafiz Mohammad Umar, the Hon'ble

Supreme Court vide its order dated 16th August, 1995. dismissed the special leave petition. Thereafter, the applicant was advised by his counsel Shri Satish Chandra, Senior Advocate, who appeared for him before the Hon''ble Supreme Court, to file review petition, as is evident from the letter of the counsel dated 16th August, 1995, a photocopy whereof has been filed as Annexure-2 to the affidavit of Mohammad I small, filed in support of the application for condonation of delay. Therefore, applicant has filed instant review application.

5. In its decision rendered In the case of Sree Narayana Dharmasanghom Trust Vs. Swami Prakasananda and Others, Hon''ble Supreme Court of India has ruled as below :

"Therefore, once this Court has passed an order, the order passed by the High Court stands merged with the order passed by this Court. Thereafter, the High Court/Tribunal is devoid of the Jurisdiction to review the order."

(See paragraph 5 at page 102)

"Thus, it is settled law that even the dismissal of SLP in limine operates as a final order between the parties and any order passed by the High Court/Tribunal subsequently operates as a res Judicata as far as the parties thereto are concerned."

(See paragraph 6 at page 102)

6. In view of the above decision of Hon''ble Supreme Court, this Court Is devoid of the Jurisdiction to review the judgment and order dated 10th February, 1995. Thus, review application is clearly not maintainable.

7. In view of the fact that review application itself is held to be not maintainable, it is not necessary to decide the question of condonation of delay in filing the review application.

8. In the result, the review application fails and is hereby dismissed. There is no order as to costs.