
(1998) 04 AHC CK 0072

In the Allahabad High Court

Case No : Civil Miscellaneous Review Application No. 49401 of 1995 In Second Appeal No. 1949 of 1980

Mohd. Ismail @ Chhedi and Others

APPELLANT

Vs

Haji Hafiz Mohammad Umar and Others

RESPONDENT

Date of Decision : 23-04-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (1998) 04 AHC CK 0072

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

Final Decision : Dismissed

Judgement

D. S. Sinha, J.—Heard Shri Kaliash Nath Tripathi, learned Counsel appearing for the defendantappellantapplicant and Shri Sankatha Rai, learned Counsel representing the plaintiff respondentopposite party.

2. By means of instant application under Order XLVII, 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 No. 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 under Section 5 of the Limitation Act, 1963. The plaintiffrespondentopposite party has filed counteraffidavit objecting the condonation of delay.

4. It is opposite to notice that the judgments and decree sought to be reviewed, was challenged before the Hon''ble Supreme Court of India through Special Leave petition No. 17674 of 1995, Mohammad Ismail v. Hazi Hafiz Mohammad Umar and 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 Ismail, filed in support of the application for condonation of delay. Therefore, applicant has filed review application.

5. In its decision rendered in the case of the Sree Narayan Dharma Sangam Trust v. Swami Prakasananda and others, JT 1997 (5) SC 100, 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 special leave petition 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.

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

Review application dismissed.