

(2016) 08 AHC CK 0145
In the Allahabad High Court
Case No : Civil Revision No. 151 of 2001.

**M/S Mahamaya General Finance Co. - Revisionist @HASH State of U.P. -
Opposite Party**

Date of Decision : 16-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9, Section 151
Land Acquisition Act, 1894 — Section 18

Citation : (2016) 119 ALR 210 : (2016) 133 RD 763

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : M.K. Tripathi and B.D. Tripathi, Advocates, for the Revisionist; S.C, for the Respondent

Final Decision : Dismissed

Judgement

Pankaj Mithal, J. - Heard Sri M.K. Tripathi, learned counsel for the revisionist and learned Standing Counsel for the respondent.

2. The revisionist has protested against the award passed by Collector/Special Land Acquisition Officer under Section 11 of the Land Acquisition Act. The Collector/Special Land Acquisition Officer referred the matter to the District Judge under Section 18 of the Act and was registered as LAR case no.191 of 1973. The said reference was dismissed for want of prosecution on 16.08.1975. The revisionist moved an application purported to be under Order 9, Rule 9 C.P.C. for recalling the above order, which was registered as Misc. Case No. 27 of 1975. Unfortunately, the said application was rejected for want of prosecution on 01.11.1975. Again an application was filed on 02.08.1998 purported to be under Section 151 C.P.C. along with application under Section 5 of the Limitation Act for condoning the delay in filing the same. It came to be registered as Misc. Case No.30 of 1998. The aforesaid case has been dismissed by impugned judgement and order dated 29.11.2000.

3. The submission of learned counsel for the revisionist is that the reference filed under Section 18 of the Act is not liable to be dismissed for want of prosecution,

as such, the order of its dismissal is liable to be recalled and the reference is to be answered.

4. In support, he has placed reliance upon the decision of the Apex Court in the case of Khazan Singh (dead) by L.Rs v. Union of India, reported in AIR 2002 SC, 726. There may not be any dispute with regard to the preposition of law as laid down by the Apex Court that a reference once made has to be answered on merit even though the parties failed to appear. The Court is not vested with any power to dismiss it for want of prosecution.

5. In the revision the question is not with regard to the correctness or validity of the order dated 16.08.1975, by which the reference was dismissed for default rather is regarding the correctness of the order dated 29.11.2000 by which Misc. Case No.30 of 1998 has been dismissed.

6. Learned Standing Counsel has raised preliminary objection that against the rejection of application under Order 9, Rule 9 C.P.C., appeal is provided under Order 43, Rule 1 C.P.C. and, therefore, this revision is not maintainable.

7. The preliminary objection, so raised is not sustainable for the reason that the revision is directed against the rejection of the application filed under Section 151 C.P.C. and not are filed under Order 9 Rule C.P.C.

8. In the case of Shyamsundar Mantri v. Land Acquisition Collector, Cuttack, reported in AIR 1993 Orissa, 70, the Division Bench of that High Court has held that against the rejection of reference under Section 18 of the Act for want of prosecution the application under Order 9, Rule 9 C.P.C. is not maintainable and the proper course available to the party aggrieved is to apply under Section 151 C.P.C.

9. In view of the above, the application purported to be filed under Order 9, Rule 9 C.P.C. has to be treated as one under Section 151 C.P.C. Accordingly, both the applications which have been rejected by orders dated 29.11.2000 and 01.11.1975 under Section 151 C.P.C. The said orders are revisable.

10. The revisionist by means of this revision has not only assailed the order dated 29.11.2000 but also the order dated 01.11.1975. The revision was presented on 26.02.2001. On the date of presentation of the revision, it was patently barred by time as regards the order dated 01.11.1975. An order, which was passed in the year 1975 can not be permitted to be challenged after more than twenty five years and that too without seeking any condonation of delay in filing the same. Thus challenge to the order dated 01.11.1975 through this revision is not permissible.

11. Now coming to the main order dated 29.11.2000, the court below has considered the cause shown by the revisionist for his absence on the date fixed when Misc. Case No.27 of 1975 was dismissed for want of prosecution but decline to accept the same.

12. The contention that the pairokar-revisionist had left without any intimation and that the counsel failed to inform about the progress of the aforesaid case was not accepted by the court below and thus, it declined to condone the delay in entertaining the application, filed under Section 151 C.P.C. after twenty three years of passing of the order dated 01.11.1975.

13. The reasoning given by the court below in refusing to accept the cause shown in the application and in rejecting the application for recall of the order dated 01.11.1975 is no where faulty. There is no manifest error in passing the same which may permit me to interfere in revisional jurisdiction.

14. Accordingly, revision has no merit and is dismissed.