
(2014) 02 AHC CK 0171

In the Allahabad High Court

Case No : Criminal Misc. Recall Application No. 49533 of 2014 in Criminal Misc.
Transfer Application No. 446 of 2013

Shusila Devi

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Citation : (2014) 2 ACR 2057 : (2014) 85 ALLCC 785

Hon'ble Judges : Anil Kumar Sharma, J

Bench : Single Bench

Advocate : Shaktidhar Tiwari, Advocate for the Appellant; Satya Prakash Shukla, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar Sharma, J.—Heard learned Counsel for the applicant, learned AGA for the State and perused the record. The applicant has filed this restoration application for recall of the order dated 22.01.2014, whereby her Transfer Application (Criminal) No. 446/2013 was dismissed for want of prosecution.

2. It has been argued that Counsel due to inadvertence he could not appear in the Court as he has no assistance of any clerk.

3. On the basis of the law laid down by this Court in the case of Hari Prakash Saxena Vs. Pratibha Saxena, , the Counsel was asked to show contrary law on the point whether application for restoration or recall of an order dismissing the transfer application (criminal) in default is maintainable. In reply Counsel has placed reliance on the case of Madan Lal Kapoor Vs. Rajiv Thapar and Others, . In this case, it was held by the Hon'ble Apex Court that criminal revision cannot be dismissed in default and it has to be decided on merits even if the revisionist or his Counsel is not present. This case is of no help to the applicant.

4. The case of Hari Prakash Saxena (supra) is quite similar to the facts of the instant case. Para-9 of the report is reproduced as under, to make the things

quite clear: 9. The same is the position in respect of transfer application also. A transfer application can be dismissed in default of the applicant and it can also be allowed ex-parte in the absence of the opposite party, but there is no provision for restoration of the transfer application or for setting aside ex parte order passed on transfer application. As such an application for recall of an order dismissing transfer application in default or for setting aside an ex parte order passed on the transfer application is not maintainable. The applicant is, however, not remediless. He can move a fresh transfer application if he still has got good ground for transfer and he can move for retransfer of the case if he has got sufficient ground for the same. He can also move before higher Court challenging the order passed by the Court below. My above view is also supported by the observation of Hon"ble Apex Court in "Superintendent and Remembrancer of Legal Affairs v. Mohan Singh", in which it has been held that rejecting a prior application for quashing would be no bar to entertainment of the subsequent application.

In view of above, the instant recall application/restoration application of the order dated 22.01.2014, whereby the transfer application of the applicant was dismissed in default is not maintainable. However, he can move a fresh transfer application if the grounds for transfer of the case still holds good and are sufficient.

In view of above, the restoration/recall application No. 49533 of 2014 is dismissed.