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Union of India & Ors vs.ex-constable Dilip Kumar Jha

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SooperKanoon Citation : sooperkanoon.com/1203939

Court : Delhi

Decided On : Oct-26-2016

Appellant : Union of India & Ors

Respondent : Ex-Constable Dilip Kumar Jha

Advocate for Def. : Mr. Khagesh B. Jha

Advocate for Pet/Ap. : Mr. Anurag Ahluwalia

Judgement :

* + % UNION OF INDIA & ORS IN THE HIGH COURT OF DELHI AT NEW DELHI RSA No.6/2012 & C.M. Appl. 37924/2016 (for stay under Section 151 CPC) 26th October, 2016 ..... Appellants Through: Mr. Anurag Ahluwalia, CGSC for UOI. versus EX-CONSTABLE DILIP KUMAR JHA ..... Respondent Through: Mr. Khagesh B. Jha, Advocate for R-1. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) C.M. Appl. No.37925/2016 (for exemption) 1.

2. Exemption allowed, subject to all just exceptions. The application stands disposed of. C.M. Appl. No.37923/2016 and Review Petition No.466/2016 3. The Supreme Court in Special Leave Petition (Civil) No.36219/2013 filed by the appellants against the Order of a learned Single Judge of this Court dated 19.3.2013 dismissing the Regular Second Appeal only records that appellants wanted to withdraw the SLP before the Supreme Court RSA No.6/2012 Page 1 of

5 because a review petition was sought to be filed before this Court against the Order of a learned Single Judge dated 19.3.2013. The Order of the Supreme Court dated 1.2.2016 does not show that any liberty was granted to file a review petition.

4. Be that as it may, a review petition can always be filed with delay provided sufficient cause is shown for condonation of delay. The Order of the Supreme Court is dated 1.2.2016 and, therefore, review petition should have been filed by 1.3.2016, however, this review petition has been filed on 27.9.2016, i.e a delay of around 7 months or
days. The only reason given in this application for condonation of delay is that review petition was marked to a government counsel and thereafter draft prepared was approved and hence the delay. Surely, such type of statements are only statements of facts but not reasons for delay because reasons for delay means as to why after the period of limitation sufficient reasons existed for not filing of the review petition. Lack of action surely cannot be taken as a basis to seek condonation of delay. For the sake of reference paragraph 3 of this application for seeking condonation of delay is reproduced as under:-

"That the Appellants again sought for requisite approvals to first decide whether a review petition is made out in the facts of the case and thereafter to get the review petition market to a government counsel. Thereafter, the draft of the review petition was received and the same was approved by the Appellants. Accordingly, the review petition could not be filed on 27.09.2016. In any case, it is prayed that the time in preferring the Special Leave Petition be excluded while RSA No.6/2012 Page 2 of 5 calculating the limitation for filing the present review application. If the said period is excluded, there is a delay of 194 days in filing the present review application. 5. Therefore, this is no ground to condone the delay of
days in filing of the review petition.

6. Even on merits the review petition is without any basis because the review petition proceeds on the basis that the facts stated in paragraph 2 of the Order of a learned Single Judge of this Court dated 19.3.2013 are incorrect because in paragraph 2 of the Order dated 19.3.2013, the learned Single Judge has recorded

that the only aspect which was argued was lack of territorial jurisdiction of the Delhi courts, i.e no other issue was argued, whereas, today it is argued that other substantial questions of law also arose for being considered.

7. Today, in October, 2016, the appellants cannot contend that other issues arose in the second appeal and the second appeal is now sought to be argued on such other issues though the Order dated 19.3.2013 records otherwise. Supreme Court in the judgment in the case of State of Maharashtra Vs. Ramdas Srinivas Naik and Another, (1982) 2 SCC463has held that whatever is factually stated in an order/judgment of a court has necessarily to be taken as final and if what is factually stated in an order/judgment of a court is wrong then as early as possible and within the shortest possible time the factual error must be pointed out to the concerned court which passed the order, and if RSA No.6/2012 Page 3 of 5 that is not done, it is not permissible to argue much later on or in an appeal against the said order/judgment that the said order/judgment contained wrong facts. The ratio of the judgment of the Supreme Court in the case of Ramdas Srinivas Naik (supra) squarely applies to the present appeal because paragraph 2 of the Order of a learned Single Judge dated 19.3.2013 dismissing the RSA records that the only substantial question of law argued on behalf of the appellants was with respect to lack of territorial jurisdiction of the Delhi courts. Therefore, today appellants cannot seek to re-argue the matter on other issues, and which would be in clear contradiction to what is recorded in paragraph 2 of the Order dated 19.3.2013 passed by a learned Single Judge of this Court dismissing the RSA.

8. I may note that counsel for the respondent argues that this review petition has only been filed when notice of the execution petition filed by the respondent was received by the appellants.

9. In view of the above, neither there is any merit in this application for seeking condonation of delay nor can the RSA be argued with respect to the points/issues which were not urged and asserted when the RSA was heard and dismissed by the Order of a learned Single Judge of this Court dated 19.3.2013. RSA No.6/2012 Page 4 of 5 10. The present review petition as also the application for condonation of delay are accordingly dismissed. Application being C.M. No.37924/2016 is also

thus dismissed. OCTOBER26 2016 AK VALMIKI J.

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