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Court : Allahabad

Decided On : May-02-2002

Reported in : 2002(4)AWC2784

Judge : Anjani Kumar, J.

Appeal No. : C.M. Review Petition No. 85526 of 2001 in C.M.W.P. No. 14809 of 2001

Appellant : Krishna Murari and ors.

Respondent : liird Additional District and Sessions Judge and ors.

Advocate for Def. : Pankaj Barman, Adv. and ;V.K. Barman, S.C.

Advocate for Pet/Ap. : Rama Goel and ;Rajesh Tandon, Adv.

Disposition : Application dismissed

Judgement :

Anjani Kumar, J.

1. After hearing the learned counsel for the parties on 2nd May, 2002, the review application was rejected by me for the reasons to be recorded later on. Now here

are the reasons for rejecting the review application.

2. Petitioners-applicants filed the petition before this Court being Writ Petition No. 14809 of 2001. This writ petition was heard and decided by Hon'ble Mr. Justice O.P. Garg, as he then was. This Court vide its judgment and order dated 19th April, 2001, while dismissing the petition granted time till 31st December, 2001, for vacating the shop in question.

3. Petitioners have challenged the order passed in this Court before the Hon'ble Supreme Court by means of Special Leave Petition (Civil) No. 9224 of 2001. This special leave petition was dismissed by Hon'ble Supreme Court. The order passed by the Hon'ble Supreme Court runs as under :

'Mr. P.S. Mishra, learned senior counsel urged that the High Court has not considered the subsequent event that has taken place. This contention is not reflected in the judgment of the High Court. The petitioners, if so advised, may move the review petition before the High Court. With the aforesaid observation, we dismiss this special leave petition.'

4. It is on the strength of the aforesaid order, the petitioners filed present review application, which was beyond time and, therefore, filed along with delay condonation application. The delay condonation application has been allowed and the matter has been heard on merit.

5. The contention of Shri Rajesh Tandon, learned Senior advocate appearing for the petitioners, is that by passing the order, Hon'ble Supreme Court has directed to consider the subsequent events ; that is why the review application has been filed. The subsequent event relied upon by the petitioners have been brought on record.

6. The Civil Misc. Application No. 51836 of 2002 has been filed with the following prayers, which run as under :

'It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased :

(a) to treat the supplementary affidavit as forming part of the review petition.

(b) to recall the order dated 19.4.2001 passed by Hon'ble Mr. Justice O. P. Garg in Civil Misc. Writ Petition No. 14809 of 2001, Krishna Murari and Ors. v. IIIrd Additional District and Sessions Judge, Mathura and Ors.'

7. Along with this application a supplementary-affidavit has been filed. In paragraph 6 of the affidavit, only paragraph 6 (H) is said to be relevant according to the learned counsel for the petitioners. Paragraph 6 (H) is quoted below :

'(H) Because Bhagwat Prasad, the predecessor of the petitioners expired during the pendency of the Appeal in the Court of Additional District Judge. The petitioner No. 1 who is 26 years old and married is carrying on Tea Stall in the shop in dispute the income from which is the only source of livelihood of the family. The petitioner No. 2 is unemployed and assisting his brother at the tea stall. The petitioner No. 3 the mother of petitioner Nos. 1 and 2 is suffering from Cancer and undergoing treatment. The petitioner No. 4 is unmarried sister and suffering from T.B. The petitioners shall suffer irreparable loss and injury if they are required to vacate the shop in dispute.'

The only relevant paragraph 10 is quoted below :

' 10. That as will appear from paragraph 12 of the counter-affidavit, the need has been changed and no where it has been denied that he has not shifted to Hodal (Haryana). It has been admitted in paragraph 12 of the counter-affidavit as below :

' 12. That the respondent No. 2 is having six sons and the eldest one runs his separate business, namely, Chander Prakash in the name and style of Goverdhan Book Bhandar and the second son Naresh aged about 28 years and he has been weak in studies right from the beginning and could pass Intermediate without most difficulty and he has also been married and is having three children. The above said Naresh had started colonising work some time ago in Kosi Kalan and purchased some lands and after developing the said land, plotting was done and tried to sell the plots. As no office is available with for his business, the business cannot be done effectively and the need is genuine.

It is further submitted that due to nonavailability of office, Naresh son of respondent No. 2 is facing lot of problem regarding advertising and other day-today work.'

On the strength of these averments the ground raised before the Hon'ble Supreme Court by the petitioners-tenant was that subsequent events have not been looked into by the High Court.

8. From the perusal of the order passed by the Hon'ble Supreme Court, it is made clear that even if this ground is held to be valid, the Hon'ble Supreme Court even then dismissed the special leave petition. The only observation made is that petitioners, if so advised, may file the review petition before the High Court as according to the Hon'ble Supreme Court the subsequent facts, which are referred to above have not been reflected from the order of the High Court.

9. This review application, therefore, cannot be said to be in pursuance of the direction of the Hon'ble Supreme Court in special leave petition, which has been dealt with review petition seeking review of the judgment and order passed by the High Court.

10. After hearing the learned counsel of the petitioners neither any ground has been made out, nor demonstrated by the petitioners that any error much less error apparent on the face of the record has been committed by this Court by dismissing the writ petition. In this view of the matter, the present application deserves to be rejected.

11. It is also settled that discovery of new facts or points, which were open to be argued but have not been argued before this High Court cannot be the ground for review of the judgment and order of the High Court.

12. Even otherwise the facts which are relied upon by the learned counsel for the petitioners for review of the judgment have been fully taken into consideration by this Court by recording the concurrent findings regarding the bona fide need of the landlord and comparative hardships and these are not open to be interfered by this Court in exercise, of powers under Article 226 of the Constitution of India.

13. In this view of the matter, the review application is rejected. The interim order dated 2nd May, 2002, shall stand vacated.

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