S.B.CIVIL MISC. APPLICATION NO.49/2006.
(Surendra Kumar & Ors. Vs. Hemant Gupta & Ors.)

Date of Order :: 06.06.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI,VJ.

Mr. G.R.Goyal, for the petitioners

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This Miscellaneous Application has been moved with the prayer that the order dated 27.01.2006 passed by this Court in S.B.Civil Writ Petition No.379/2006 may be recalled. The said order in its entirety reads thus,-

> "After attempting to argue the petition for some time, learned counsel for the petitioners submits that the petitioners will seek expeditious disposal of the suit as already directed by the Board of Revenue by the order dated 13.01.2006 [Annex.7) and in that view of the matter he seeks permission to withdraw the petition.
>
> Having regard to all the facts and circumstances of the case and the submissions made by the learned counsel for the petitioner, permission is granted to withdraw the petition.
>
> Dismissed as withdrawn."

It has been submitted in the instant application that the Board of Revenue has directed for expeditious disposal of the suit within four months but the respondents No.1 and 2 are not

interested in such expeditious disposal and have sought repeated transfer of the matter with the result that ultimately the matter is now pending before the Sub-Divisional Officer, Jodhpur and therein next date has been fixed as 21.08.2006; and that the petitioners have moved review application before the Board of Revenue on 02.06.2006 and have also moved application under Order 39 Rule 4 CPC that is also pending before the Board. According to the petitioners, the respondents No.1 and 2 have filed a wholly baseless and incompetent suit and they seek to cause irreparable injury to the petitioners in the manner that the proposed construction of college building may not be completed and resultantly the permission may be refused by the Dental Council putting the future of 400 students in jeopardy. Citing these reasons and circumstances, the petitioners have prayed for recalling of the order dated 27.01.2006 and for hearing of the writ petition on merits.

Having heard learned counsel Mr. G.R.Goyal in support of this application and having examined the record of the case, this Court is clearly of opinion that the present application is entirely misconceived and deserves to be rejected.

By the order dated 27.01.2006 the writ petition filed by the petitioners has simply been dismissed as withdrawn at the request of the petitioners who submitted before the court that

they would seek expeditious disposal of the suit as already directed by the Board of Revenue. If there has been any impediment thereto, the petitioners are free to take appropriate steps in that regard but there is no reason or justification for the petitioners to seek recalling of the order dated 27.01.2006 whereby nothing has been decided in the writ petition except permitting it to be withdrawn at the request of the petitioners.

The Miscellaneous Application is, therefore, rejected as incompetent. However, this shall not preclude the petitioners from taking recourse to appropriate proceedings.

(DINESH MAHESHWARI), VJ.

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