

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR

S.B. Civil Review Petition No.25/2013

In

S.B. Civil Second Restoration Application No.853/2012

In

S.B. Civil Restoration Application No.526/2011

In

S.B. Civil First Appeal No.450/2005

Date of Order:: 30.04.2013

Hon'ble Ms. Justice Bela M. Trivedi

Mr. J.P. Goyal Senior Counsel with
Mr. Abhi Goyal, for petitioners.

Order

By the Court:-

1. The present review petition has been filed by the petitioners-applicants seeking review of the order dated 21.02.2013 passed by this Court in second restoration application No.853/2012 in restoration application No.526/2011 in first appeal No.450/2005.

2. It has been submitted by the learned counsel Mr. J.P. Goyal for the petitioners that the party should not suffer on account of the negligence on the part of the lawyer. He further submitted that as per the decision of this Court, the second restoration application is maintainable in the eye of law. He has relied upon the decision of the Apex Court in case of *Shiv Kumar Versus Darshan Kumar*, reported in (2009) 2 Supreme Court

Cases 116, and also decisions of this Court in cases of *State of Rajasthan Versus The Board of Revenue Ajmer & Ors.* and *Dheeraj Babbar Versus Labour Court No.1, Jaipur & Ors.* He further submitted that the Court should take lenient view in restoring the proceedings so that the parties may not suffer.

3. In the instant case, it appears that the first appeal No.450/2005 was dismissed in default on account of peremptory order passed by the Court on 13.04.2007. Thereafter the petitioners-applicants had filed the restoration application No.526/2011 after a delay of 1548 days. The said restoration application was also dismissed on account of peremptory order passed by the Court on 14.05.2012, and thereafter the application being No.853/2012 was filed seeking restoration of the earlier restoration application, alongwith the application seeking condonation of delay of 176 days occurred in filing the second restoration application. The court vide the order dated 21.02.2013 had dismissed both the applications i.e. application under Section 5 of the Limitation Act as well as the application seeking restoration of the restoration application. The present petition has been filed seeking review of the said order, alongwith other applications for bringing on record the legal heirs of the

appellant No.1 Vishnu Prasad on record filed under Order XXII Rule 3, application for bringing on record the legal heirs of respondent No.3 Smt. Rajrani filed under Order XXII Rule 4 and also the applications seeking condonation of delay occurred in filing the said applications, under Section 5 of the Limitation Act.

4. It is pertinent to note that the Court, while passing the detailed order on 21.02.2013 had considered the negligence on the part of the applicants and their counsel, and had dismissed the second restoration application. The said order has remained unchallenged and the present petition has been filed seeking review of the said order on the ground that the observations made by the Court that the second restoration application was not maintainable deserve to be reviewed. It is needless to say that the scope of review under Order XLVII Rule 1 is very limited. Even the error of law cannot be corrected under the guise of review. The learned counsel Mr. J.P. Goyal has failed to point out any error in the impugned order passed by the Court which would cause great injustice to the applicants. There cannot be any disagreement with the decisions of the Apex Court and of this Court relied by the learned counsel for the petitioners, however the same have no application to the

facts of the present case.

5. In that view of the matter, there being no substance in the present petition, the same deserves to be dismissed and is accordingly dismissed.

(Bela M. Trivedi) J.

R.Vaishnav
22.

"All corrections made in the judgment/order have been incorporated in the judgment/order being emailed."

Ramesh Vaishnav Jr.P.A.