

ORDER

Vide this order, the Court shall dispose off the application of plaintiffs under Section 114 for review of order dated 25.01.2021.

Following arguments submitted on behalf of plaintiff.

1. Plaintiff has filed an application under order XXXIII r/w section 151 CPC before this Hon'ble Court. The notice of the said application was issued to the concerned SDM vide order dated 19.08.2020 but the concerned SDM did not file the report and the matter was adjourned for 26.10.2020. On 22.01.2021, the concerned SDM filed the report before this Hon'ble Court after going through the report filed by the SDM, the Hon'ble Court was pleased to dismiss the application filed by the plaintiffs on dated 25.01.2021.

2. Ld. Predecessor of this Hon'ble Court declined the application of plaintiffs on the basis of false and frivolous report as the same was prepared without conducting any inquiry from plaintiffs. As per report, plaintiff no.1 is working as a tailor from his residence and earning Rs.12,000/- (appox.) per month; has no bank account; the property owned by him is 25 sq. yds house which is under litigation; his family costs of 5 persons; he is the sole earner of the family. However, the said report is not having any iota of truth regarding the financial status of plaintiff no.1.

3. No field inquiry by the staff of SDM office was conducted. Neither plaintiffs nor the neighbours were inquired or their statements were recorded and attached with the report.

4. The report regarding occupation and income of plaintiff is false and incorrect. The mental condition of plaintiff no.1 is not well and he is therefore, not in a position to work and earn for their living. The medical documents of plaintiff no.1 filed on record confirms the same.

5. Plaintiff no.2 is working as a house maid and earning approx Rs.6,000/- per month from all sources. Plaintiffs are not having any bank account which clearly shows that plaintiffs belong to a poor background.

6. As per previous order under Order XXXIII, the Hon'ble Court has ample power for waiving the prescribed court fees. As per order XXXIII rule 1A, the Hon'ble Court may make any inquiry for waiving off the court fee.

7. This Hon'ble court may recall/review its order dated 25.01.2021 vide which the application of plaintiffs under Order XXXIII was dismissed, in the interest of justice and equity.

Findings of the Court

The relevant legal provisions and settled legal principles necessary for disposal of the aforesaid application are as under :

(a) A review petition is maintainable in cases in which no appeal lies; cases in which appeal lies but no preferred; decisions on reference from court of small causes;

(b) An application for review of a judgment may be made on any of the grounds of (i) discovery of new and important matter or evidence or (ii) mistake or error apparent on the face of the record or (iii) any other sufficient reason;

(c) The power of review is not an inherent power. It must be conferred by law either expressly or by necessary implication;

(d) The period for limitation for an application for review of a judgment by a court other than the supreme court is 30 days from the date of the decree or order;

(e) The inherent power saved by section 151 can be used to secure the ends of justice and to prevent the abuse of the process of a court;

Let us now examine whether the application of the plaintiffs deserves to be allowed for not in the light of aforesaid legal provisions and settled legal principles.

On perusal of record, it is transpired that vide Order dated

24.02.2020, notice of the application of plaintiffs under Order XXXIII r/w section 151 CPC was directed to be issued to the SDM concerned with the direction to file the report regarding the financial status of plaintiffs. In compliance of the said order, the financial status report of plaintiffs was filed on 25.01.2021. After considering the report, Ld. Predecessor dismissed the said application of plaintiffs with the observations that plaintiffs were residing in their own house and plaintiff no.1 was earning Rs.12,000/- per month and directed plaintiffs to file the deficient court fees within a period of four weeks from the date of order.

It is further transpired that plaintiffs have preferred to file the review application on the ground that as the financial status report of plaintiffs, prepared by the Office of SDM concerned was not supported by any field inquiry, the said report should not have been relied upon by the court and the application of plaintiffs should not have been dismissed. It is further transpired that considering the deficiency as pointed out by Ld. Counsel for plaintiffs in the financial status report, a fresh financial status report was directed to be filed vide Order dated 05.03.2022.

As per the said report, plaintiff no.1 is doing the work of tailoring in a factory situated at Tronica City and earning Rs.10,000/- per month; the wife of plaintiff no.1 is a housewife; plaintiffs have no other source of income; three children of plaintiff no.1 are students; plaintiffs are residing in the house of 25 sq. yds. The said financial status report is supported by the statement of neighbors of plaintiffs.

In view of the above, this court feels that the order dated

25.01.2021 passed by learned predecessor needs to be reviewed as the same was passed on the basis of a report filed without conducting any field inquiry. As indicated from fresh financial status report filed on 02.08.2022 to the effect that plaintiffs are currently not maintaining a good financial condition, therefore, they should be permitted to sue the present suit as an indigent persons and exempted from paying the requisite court fees.

Accordingly, the order dated 25.01.2021 is reviewed and recalled by allowing the present application and plaintiffs are permitted to sue the present suit as an indigent person.

The application is disposed off accordingly.

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ADJ-01/NE/KKD/DELHI
18.03.2023 pk