

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Review Petition (Writ) No. 47/2018

1. The State Of Rajasthan Through Principal Secretary,
Medical And Health Department, Government Of Rajasthan,
Government Secretariat, Jaipur
2. Director Public Health Medical And Health Services,
Swasthya Bhawan, Tilak Marg, C Scheme, Jaipur.
3. Chief Medical And Health Officer, Jaipur.

----Petitioners

Versus

Dr. Megha Gaur Daughter Son Of Shri Om Prakash, Gaur Wife Of
Dr. Pradeep Kumar Sharma, R/o V And Post Indrapura, Via
Dhudhwakhra, District Churu.

----Respondent

For Petitioner(s) : Mr. Prateek Singh for
Mr. Sheetal Mirdha.

For Respondent(s) : Mr. Madhav Mitra.

HON'BLE MR. JUSTICE ARUN BHANSALI

Order

04/09/2021

Office has reported that the review petition is barred by 1183 days. An application has been filed by the petitioners under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the review petition.

It is submitted by learned counsel for the petitioners that the order under review was passed on 28/10/2014 by a coordinate bench of this Court. Aggrieved against the said order dated 28/10/2014, D.B. Special Appeal (Writ) No. 1142/2017 was filed along an application seeking condonation of delay in filing the special appeal. After notice, the said special appeal was disposed

of on 23/11/2017, wherein, the delay in filing the appeal was condoned and in view of the submissions made before the Division Bench, it was kept open for the petitioners to move appropriate application before the Learned Single Judge and it was further ordered that if the review petition is filed, the same will be considered on merits. After passing of the order dated 23/11/2017 the present review petition has been filed on 22/2/2018.

Submissions have been made that as the Division Bench, while deciding the special appeal filed by the petitioners, has condoned the delay in filing the appeal and, thereafter, disposed of with the indication that if the review petition is filed, the same will be considered on merits, the delay in filing the review petition be condoned and review petition be considered on merits.

Learned counsel appearing for the respondent vehemently opposed the submissions questioning the conduct of the petitioners in pursuing the present litigation. Submissions were made that the appeal was filed with a delay of over three years, and after the same was disposed of by the Division Bench, even after filing of review petition, the petition which was lying in defect was not pursued, resulting in same getting dismissed on account of peremptory order dated 23/7/2018. The restoration application was filed after more than one year, which was also in defect and again after passing of peremptory order, the defects in restoration application were removed and same came to be allowed on 23/10/2019 after condoning the delay. The review petition was again not pursued and finally, notices were ordered to be issued in the present review petition on 30/3/2021, whereas, in the meanwhile, the petitioners have complied with the order under review.

It was submitted that looking at the conduct of the petitioners, the application seeking condonation in filing review petition deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

It is apparent that qua the order under review passed by the coordinate bench of this Court on 28/10/2014, special appeal came to be filed in the year 2017 along with an application seeking condonation of delay. The Division Bench after hearing the parties, passed the following order:

"23/11/2017

Delay in filing the appeals is condoned. The application u/s 5 of the Limitation Act stand allowed. Defects waived in appeal no. 1393/2017.

If the notification dated 11th August, 2014 is not applicable in the case of original petitioner, it will be open for the appellant to move appropriate application before the learned Single Judge.

We are not expressing any opinion on merits of the case. If the review application is filed, the same will be considered on merits.

Both the appeal stand disposed of.

The application No. 58713/17 is also disposed of."

A perusal of the above order indicates that the delay of about three years in filing the special appeal was condoned by the Division Bench and while disposing of the appeal, it was left open for the petitioners therein to move appropriate application before the learned Single Judge and it was further observed/directed that 'if the review application is filed, the same would be considered on merits'. The order has been passed in the presence of counsel for the respondent and in those circumstances, once the Division Bench has condoned the delay of over/about three years in filing the appeal and has required decision of review petition on merits, the filing of application seeking condonation of delay has essentially been rendered a formality.

The submission made by learned counsel for the respondent regarding conduct of the petitioners qua the manner of pursuing the present litigation may have implication on the merits of/relief in the review petition, however, the same by itself cannot be a reason for rejecting the application seeking condonation of delay.

In view of the above discussion and observations of the Division Bench, the delay in filing the review petition deserves to be and is, therefore, condoned.

List the review petition for orders along with the record of D.B.Special Appeal (Writ) No. 1142/2017, S.B.Civil Contempt Petition No. 1537/2016 and S.B. Civil Contempt Petition No. 571/2019.

(ARUN BHANSALI),J

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