

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 245 OF 2012
(@ SPECIAL LEAVE PETITION(C)NO.6911 OF 2011)

S.M.I.KAZIM

... APPELLANT

VERSUS

NEW INDIA ASSURANCE CO. LTD. & ANR.

... RESPONDENTS

O R D E R

1. Leave granted.
2. This appeal is directed against the judgment and order dated 12.01.2011 of the High Court of Judicature at Allahabad in Civil Miscellaneous Application No.34180 of 2010 in Civil Miscellaneous Writ Petition No.62495 of 2007. By the impugned judgment, the High Court has refused to recall the earlier order dated 03.12.2009.
3. Keeping in view the peculiar facts and circumstances pleaded in the petition, we are of the opinion that the High Court ought to have considered the application filed by the applicant/appellant more sympathetically instead of approaching the matter with hyper technicality while considering the request for recalling the order passed and dismissing the petition for non-prosecution.
4. We have perused the explanation offered by the appellant in the application filed in recalling the order

dated 03.12.2009. We are satisfied that the explanation offered is satisfactory and therefore, instead of remanding the matter to the High Court, for fresh consideration of those application, we set aside the impugned orders passed by the High Court dated 12.01.2011 and 03.12.2009 and remand the matter to the High Court with a request to decide the petition on merits.

Appeal is disposed of.

Ordered accordingly.

NEW DELHI;
JANUARY 09, 2012

.....J.
(H.L. DATTU)

.....J.
(CHANDRAMAULI KR. PRASAD)



JUDGMENT