

(2011) 02 KAR CK 0164
In the Karnataka High Court
Case No : Review Petition No. 475 of 2009

A.A. Enterprises

APPELLANT

Vs

Tektronix (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : (2011) 3 KCCR 353 SN : (2011) 3 KCCR 351

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Abhinav R., Ujwala, for Kumar and Kumar, for the Appellant; Vamshi Krishna, for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J.—Ms. Ujwala, the learned Counsel for the Petitioner submits that the delay of 4 days in filing this review petition is on account of the time taken to decide as to whether the review petition is to be filed or S.L.P is to be filed. She further submits that the papers were also sent to her counter-part in Delhi.

2. Sri Vamshi Krishna, the learned Counsel for the Respondent submits that the delay of 4 days in filing this review petition is not properly and cogently explained.

3. Appreciating the explanation offered, this Court deems it just to condone the delay of 4 days in filing this review petition. Accordingly Misc. Cvl.7798/10 is allowed.

4. The Petitioner has sought the review of the order, dated 15.9.2009 passed by this Court in W.P. No. 24816/09. The Trial Court's order, dated 15.4.2009 refusing to grant permission to file the written statement was impugned in the said writ petition. Not finding bonafide reasons for the two years" delay in filing the written statement, this Court confirmed the Trial Court's order and dismissed

the writ petition.

5. Ms. Ujwala, the learned Counsel for the Petitioner submits that there have been multiple documents arising from voluminous transactions. To cull out the information and compute the amounts regarding the entitlement/liability of the parties herein, the Petitioner took little more time. She submits that this aspect of the matter was not clearly brought out in the course of the arguments. She fairly submits that though there is no error on the face of the order, the lapse on the part of the counsel should not put the party to any prejudice or injustice.

6. According to the learned Counsel, this review petition is maintainable, as the same is filed before the filing of the SLP To advance this submission, she relied on paragraph No. 38 of the Hon''ble Supreme Court's judgment in the case of Kunhayammed and Ors. v. State Of Kerala and Anr. reported in JT 2000 (9) SCC 110. The same is extracted hereinbelow:

38. The review can be filed even after SLP is dismissed is dear from the language of Order 47 Rule 1(a). Thus the words "no appeal has been preferred"" in Order 47 Rule 1(a) would also mean a situation where special leave is not granted. Till then there is no appeal in the eye of law before the superior court. Therefore, the review can be preferred in High Court before special leave is granted, but not after it is granted. The reason is obvious. Once special leave is granted the jurisdiction to consider the validity of the High Court's order vests in the Supreme Court and the High Court cannot entertain a review thereafter, unless such a review application was preferred in the High Court before special leave was granted.

7. The learned Counsel further submits that the Trial Court did not give any opportunity to the Petitioner to cross-examine the Respondent (PW1).

8. Sri Vamshi Krishna, the learned Counsel for the Respondent has raised a threshold bar to the very maintainability of the review petition. He submits that the Petitioner had challenged this Court's order, dated 15.9.2009 in SLP No. 29872/09 before the Hon''ble Supreme Court of India. The said SLP was dismissed by the Hon''ble Apex Court, by its order, dated 4.12.2009. He submits that on the confirmation of this Court's order by the Hon''ble Supreme Court, the Petitioner cannot seek the review of this Court's order. He submits that this Court's order, dated 15.9.2009 is merged in the Supreme Court's order, dated 04.12.2009. According to him, if any review petition is to be filed, it has to be only in the Hon''ble Supreme Court of India.

9. The learned Counsel for the Respondent further submits that the ground, which is being urged in support of the review petition was urged in the course of the arguments in the writ petition itself.

10. Ms. Ujwala, in the course of her rejoinder, submits that the doctrine of merger has no application, as the review petition was filed on 10.11.2009 and the SLP was listed for the first time on 25.11.2009. As the filing of the review

petition is prior to the listing of the SLP, there is no legal impediment in considering this review petition, so contends the learned Counsel for the Petitioner.

11. The scope for reviewing an order in exercise of the power conferred by Section 114 r/w Order XLVII Rule 1 of CPC is rather limited. An error which has to be established by a long drawn process of reasoning on points, where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. In taking this view I am fortified by the Hon''ble Apex Court's judgment in the case of Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, .

12. In the case of S. Bagirathi Ammal v. Palani Roman Catholic Mission reported in (2009) 10 SCC 464, the Apex Court has held that an error contemplated under Rule 1 of Order XLVII of CPC for permissibility of review must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertance. It should be something more than a mere error and it must be one, which must be manifest on the face of the record. If the error is so apparent that without further investigation or enquiry only one conclusion can be drawn in favour of the applicant, the review will lie.

13. The difficulties of the Respondent as sought to be made out by the learned Counsel were indeed considered by this Court in its order, dated 15.9.2009. The Apex Court in the case of Harinagar Sugar Mills Ltd. and Anr. v. State Of Bihar and Ors. reported in (2006) 1 SCC 509 has held that re-agitating of the points already decided is impermissible in review proceedings.

14. That certain aspects were not brought out more elaborately or were not highlighted also cannot be a ground for seeking the review of an order. In this regard, it is profitable to refer to the Apex Court's judgment in the case of Haridas Das Vs. Smt. Usha Rani Banik and Others, . In the said case, the Apex Court has held that a re-hearing of the dispute is not postulated because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited the binding precedents to the Court and thereby enjoyed a favourable verdict. It is further held therein that where the order in question is appealable, the aggrieved party has adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection.

15. Viewed in the backdrop of the authorities to which the references are made hereinabove, I do not find an iota of scope for reviewing the order. None of the circumstances enumerated in Section 114 and Order XLVII Rule 1 of CPC are present in the instant case.

16. For yet another reason too, I am disinclined to entertain this review petition. It is not in dispute that the Petitioner has filed SLP No. 29872/09 challenging the very same order, dated 15.9.2009. The Hon''ble Supreme Court has dismissed

the said SLP by its order, dated 4.12.2009. My order, dated 15.9.2009 stands merged in the Apex Court's order, dated 04.12.2009. This Court's order is sunk in the Hon''ble Supreme Court's order by the operation of the doctrine of merger. If the order, dated 15.9.2009 is reviewed, it amounts to reviewing the Apex Court's order, which is not permissible. When the superior Court has been approached for the selfsame relief, the review application has to be rejected at the threshold itself.

17. In the case of Abbai Maligai Partnership Firm and Another Vs. K. Santhakumaran and Others, , the Apex Court has held that the very entertaining of the review petition in respect of the order against which the SLP was filed and dismissed is an affront to the order of the Supreme Court. Para 4 of the said judgment is extracted hereinbelow:

4. The manner in which the learned Single Judge of the High Court exercised the review jurisdiction, after the special leave petitions against the selfsame order had been dismissed by this Court after hearing learned Counsel for the parties, to say the least, was not proper. Interference by the learned Single Judge at that stage is subversive of judicial discipline. The High Court was aware that the SL Ps against the orders date 7-1-1987 had already been dismissed by this Court. The High Court, therefore, had no power or jurisdiction to review the selfsame order, which was the subject-matter of challenge in the SL Ps in this Court after the challenge had failed. By passing the impugned order on 7-4-1994, judicial propriety has been sacrificed. After the dismissal of the special leave petitions by this Court, on contest, no review petitions could be entertained by the High Court against the same order. The very entertainment of the review petition, in the facts and circumstances of case, was an affront to the order of this Court. We express our strong disapproval and hope there would be no occasion in the future when we may have to say so. The jurisdiction exercised by the High Court, under the circumstances, was palpably erroneous. The Respondents who approached the High Court after the dismissal of their SL Ps by this Court, abused the process of the court and indulged in vexatious litigation. We strongly deprecate the matter in which the review petitions were filed and heard in the High Court after the dismissal of the SL Ps by this Court. The appeals deserve to succeed on that short ground. The appeals are, consequently, allowed and the impugned order dated 7-4-1994 passed in the review petitions is hereby set aside. The Respondents shall pay Rs. 10,000 as costs.

18. It is also beneficial to refer to the Apex Court's judgment in the case of Gopabandhu Biswal Vs. Krishna Chandra Mohanty and Others, , wherein it is held that once the SLP is filed against the judgment of the Tribunal and rejected, the judgment of the Tribunal becomes final and binding; and thereafter no review of the Tribunal's judgment is permissible. In the case of Sree Narayana Dharmasanghom Trust Vs. Swami Prakasananda and Others, , the Hon''ble Supreme Court has held that even order of Supreme Court dismissing the SLP in limine would operate as a final order between the parties and the High Court's

order passed in the revision would stand merged with the appellate order of the Supreme Court.

19. Similarly, in the case of State of Maharashtra and another Vs. Prabhakar Bhikaji Ingle, it is held that when the selfsame order was confirmed by the Supreme Court, the exercise of power of review by the Tribunal would be deleterious to the judicial discipline. Once the Supreme Court has confirmed the order of the Tribunal, that becomes final. Therefore, the Tribunal cannot have any power to review the previous order, which stands merged with the order passed by the Supreme Court.

20. For the selfsame relief, two parallel proceedings before two forums cannot be permitted to be taken. The judgments relied upon by the Petitioner's side do not come to the rescue of the Petitioner in any way.

21. Further, the date of filing the SLP itself is not furnished to the Court. There is nothing on record to show that SLP was filed after the filing of the review petition.

22. For the above-stated reasons, I dismiss this petition both on the ground of maintainability and on merits.