
(2006) 08 GAU CK 0003

In the Gauhati High Court

Case No : Review Petition No. 17 of 2005

Basant Cables and Conductors Pvt. Ltd. and Another

APPELLANT

Vs

UCO Bank and Others

RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226

Citation : (2006) GLT 13 Supp

Hon'ble Judges : I.A. Ansari, J;A.B. Pal, J

Bench : Division Bench

Advocate : A.K. Bhowmik and S. Ghosh, for the Appellant; S. Dutta, S. Debnath and Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Pal, J.—By this review petition, the Petitioners have sought review of the judgment which we have rendered on 1.8.05 in F.A. No. 228 of 1997. In that appeal M/s Basant Cables and Conductors Pvt. Ltd., the Petitioners herein, were the Respondents.

2. The Petitioners herein filed a money suit against the U. Co Bank (for short, "Bank") and Sri Ranjit Roy Chowdhury was its Chief Manager of Agartala Branch at the relevant period claiming damages to the tune of Rs. 11 lakhs as special damages and Rs. 25,66,953/- as general damages, the total amount of damages being Rs. 36,66,953. The said amount included Rs. 40,287/- which was debited in the account of the Company (the Petitioners herein) on 31.3.90 which gave rise to the cause of action. The Bank contended that the suit having been filed in 1994, the said claim was time-barred. The second cause of action for the suit was from 19.11.92 when CCF and ILOC facilities were withdrawn by the Bank unilaterally as a result of which, the company suffered huge loss for which damages had been claimed in the said suit. The suit was decreed by the learned Civil Judge, Sr. Division, West Tripura, Agartala in Money Suit No. 47 of 1994 for

an amount of Rs. 25,52,424/- with interest @ 10% per annum. and cost of the suit. In the appeal, we, by the said judgment, have reversed the judgment impugned after holding that withdrawal of the CCF and ILOC facilities by the Bank or its Chief Manager was not actuated by any mala fide intention.

3. In this review petition, efforts have been made to show errors apparent on the face of the record to justify review of our judgment. The first ground is that though the first appeal was purportedly filed by the Bank and its Chief Manager Ranjit Roy Chowdhury, the memo of appeal or the vakalatnama was not signed by him. Therefore, the said appeal was not maintainable. The decree passed by the learned Civil Judge, Sr. Division slapped on the Bank of liability to pay decretal amount with direction to it to realize the same from its officers responsible for the loss to the Bank who were the Chief Manager, Agartala Branch and the Zonal Manager, Guwahati. The Bank having approved the action of the officers to withdraw the CCF and ILOC facilities became liable to pay the decretal amount and so it has put under challenge the said decree. In our view, the appeal by the Bank alone was maintainable and, therefore, we reject the flimsy ground of maintainability at the very outset. The other grounds for review are as follows:

(I) Rs. 40,287.80 was deducted by the Bank in the account of the Company though the Bank had no such authority. The trial court observed that the sanction letters (Exts. 1 and 3) contain nothing to show that the Company was bound to pay the premium of DICGCI. It was further observed that the Bank might have inadvertently forgotten to mention such a clause in the sanction letters. In such occasion, according to the trial court, the Bank was duty bound to issue show cause notice to the complainant before such payment of premium to DICGCI in the month of March, 1990. The controversy was whether the sanction of the loan was under Clause (16) or Clause (8). The same issue has been dealt with by us in the judgment under review. On perusal of the relevant document, we came to hold that there was no requirement of giving notice to the complainant before such deduction which was a premium payable by the Company to the DICGCI.

(II) According to the Company, the additional interest @ 31% on Rs. 10,00,380/- deducted by the Bank was without any authority and we have wrongly reversed the finding of the learned trial court on this issue. We have dealt with the issue and in our view, the same had occasioned due to non deposit of marginal excess by the Company over the sanction limit for which the Bank was not responsible. According to the review Petitioners, the relevant documentary evidence, particularly Ext. 3 was misinterpreted by us. Several other grounds have been taken to show that the judgment under review suffers from error arising from misinterpretation of the relevant documents and other materials on record.

4. We have heard Mr. A. K. Bhowmik, learned sr. counsel assisted by Mr. S. Ghosh, learned Counsel for the Petitioner and Mr. S. Dutta, learned Counsel for the Respondent Bank.

5. The only question that falls for consideration is whether on the above grounds adumbrated in the review petition, a review can at all be entertained. Order XLVII Rule 1 of the CPC (for short, "Code of Civil Procedure") leaves no doubt that the review proceeding is not an appeal and, therefore, has to be strictly confined to the scope and ambit of that provision. In *Smt. Meera Bhanja v. Smt. Nirmala Kumari Choudhury* reported in 1995 SCC 455, the Supreme Court, on the power of the Court to review its own judgment made the following observations in para 8, the relevant part of which is quoted below:

8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, Code of Civil Procedure. In connection with the limitation of the powers of the Court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh*, speaking through Chinnappa Reddy, J., has made the following pertinent observations (para 3):

It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court to plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the persons seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

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. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ.

6. The limitations on exercise of review jurisdiction noticed in the above noted decisions take us to the arguments advanced and the grounds taken by the Petitioners upon close examination of which we are of the view that the same are not error on the face of the record. The learned senior counsel has taken long forty minutes to bring home his points to show how some erroneous findings erupt in the judgment under review. Though such grounds may be possibly taken

in an appeal, the same cannot be the basis for review and for this reason alone, we dismiss this review petition with no order as to cost.