

(2005) 06 GAU CK 0062

In the Gauhati High Court

Case No : C. Review Petition No. 01 (K) of 2005

Chairman and Managing Director, H.P.C. Ltd. and Others

APPELLANT

Vs

Bendangkokba Longkumar and Another

RESPONDENT

Date of Decision : 09-06-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 12, 137, 145, 147, 226

Citation : (2006) 4 GLT 365

Hon'ble Judges : T.N.K. Singh, J;A.B. Pal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

T.N.K. Singh, J.—This is an application for review of the ex-parte judgment and order of this Court dated 24.01.2005 passed in Writ Appeal No. 512 of 1997 (Gauhati) WA No. 1(K) of 1999.

2. It is a settled position in law that no judicial order passed by any superior Court in judicial proceedings can be said to have violated any of the fundamental rights enshrined in Part-III of the Constitution of India. It may, further be noted that the superior Court of Justice do not also fall within the ambit of State or other authorities under Article 12 of the Rupa Ashok Hurra Vs. Ashok Hurra and Another, . This is also a settled position of law that Principles of finality of the judgment of the superior Court should be maintained inasmuch as the Review Petitioners are not to be taken as a routine course. It is also equally well settled that the Court should act ex-debito justitiae as may be necessary in the interest of justice or necessary to do so for the sake of justice by exercising the power of review. As such, the Court, while exercising the power of review within the four corners of power of review, has to strike the balance between the principle of finality of judgment and requirement of the superior Court to act ex-debito justitiae by exercising the power of review. The Apex Court is rendering ex-debito justitiae by exercising the power of review. It will be required to see the

source of power of the Supreme Court for exercising the power of review for doing ex-debito justitiae and those of this Court.

3. Article 137 of the Constitution of India confer power on the Apex Court to review any judgment pronounced or order made by it subject to the provisions of any law made by the Parliament or any rules made under Article 147 of the Constitution. Article 137 is quoted hereunder:

137. Review of judgments or orders by the Supreme Court-Subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

4. Power of Apex Court to review its judgment and order are mentioned in Part-VIII, Order XL of the Supreme Court Rules, 1966 which reads as follows:

1. The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII, Rule I of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record.

2. An application for review shall be by a petition and shall be filed within thirty days from the date of judgment or order sought to be reviewed. It shall set out clearly the ground for review.

3. Unless otherwise ordered by the Court an application for review shall be disposed of by circulation without any oral arguments, but the Petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite party. An application for review shall as far as practicable be circulated to the same judge or Bench of Judges that delivered the judgment or order sought to be reviewed.

4. Where on an application for review the Court reverses or modifies its former decision in the case on the ground of mistake of law or fact, the Court, may, if it thinks fit in the interests of justice to do so, direct the refund to the Petitioner of the Court-fee paid on the application in whole or in part, as it may think fit.

5. Where an application for review of any judgment and order has been made and disposed of, no further application for review shall be entertained in the same manner.

5. From the conjoined reading of Article 137 of the Constitution of India and Order XL of the Supreme Court Rules, 1966 it is clear that the Apex Court shall entertain an application for review on the grounds mentioned in Order XLVII, Rule 1 of the CPC which reads as follows:

1. Any person considering himself aggrieved,

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the existence of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

The Supreme Court has expressly been given the power to review its judgments. The power is exercisable in accordance with and subject to, the rules of the Court made under Article 145. The rules permit the review of a judgment by the Supreme Court on the grounds mentioned in Order 47, Rule 1 of the Code of Civil Procedure. Hence a review will lie on the following three grounds:

(i) discovery of new and important matters or evidence;

(ii) mistake or error apparent on the face of the record; and

(iii) any other sufficient reason.

6. This Court in exercising the jurisdiction under Article 226 of the Constitution of India has power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to direct grave and palpable errors committed by it. [Reference: Shivdeo Singh and Others Vs. State of Punjab and Others, (Constitution Bench)]. The Apex Court in *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, held that in a Writ Proceeding under Article 226 of the Constitution of India the proceedings underlying in the Code of Civil Procedures should be extended in the interest of administration of justice. Keeping in view of the above ratio laid down by the Apex Court, this Court while exercising the power of review in the writ proceedings shall entertain an application for review on the grounds mentioned in Order XL-VII, Rule 1 of the CPC in the manner the Apex Court entertains an application for review on the grounds mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure.

7. The main ground for filing this application for review of the judgment and order of this Court dated 24.01.2005 passed in WA No. 512/97/WA No. 1(K)/99 is that a grave injustice had been done to the review Petitioners/Appellants in passing the impugned judgment and Order dated 24.01.2005 in their absence. From the records it appears that the connected writ appeal i.e.W.A. No. 512/97/WA No. 1(K)/99 was filed through Guwahati based lawyers, namely, A.K. Bhattacharjee, Senior Advocate and Ms. M. Hazarika. The Writ appeal No. 512/97 was admitted at the Principal Bench after hearing Mr. A.K. Bhattacharjee, Senior Advocate assisted by Ms. M. Hazarika for the Appellants, both of them are Guwahati based lawyers. The order of this Court (Division Bench) dated

16.11.1999 indicates that the records of the connected writ appeal i.e. W.A. No. 512/97 (Guwahati) had been received on transfer to this Bench (Gauhati High Court, Kohima Bench) and ordered to issue notice to the parties, i.e. review Petitioners/Appellants and Respondents of the connected writ appeal No. 512/97. It appears that, after the connected WA No. 512/97 had been received by this Bench, the same had been re-registered as W.A. No. 1(K)/99. From the careful perusal of record, it transpires that there is no record for effecting service of notice of the connected writ appeal to the review Petitioners/Appellants in compliance of the order of this Court dated 16.11.1999 except the office noting dated 26.11.1999 that notice had been issued to the two parties on 26.11.1999 vide letter No. 2539-40. But it is not known as to whether or not the said notice under letter No. 2539-40 had been properly served to the review Petitioners/Appellants and there is no record for effecting service of notice of the connected writ appeal to the review Petitioners/Appellants. All the subsequent orders of this Court after 16.11.1999 show that only one Mr. Taka Massa, learned Counsel for the Respondents appear before this Court. This Court under the mistaken belief that service of notice to the review Petitioners/Appellants had been properly effected in compliance with the order of this Court dated 16.11.1999 had taken up the connected writ appeal for final disposal on 24.01.2005 and thereby resulting to passing the judgment and order dated 24.01.2005 for disposing of the connected writ appeal in the absence of review Petitioners/Appellants.

8. In Rafiq and Another Vs. Munshilal and Another, where the appeal had been dismissed for default of Appellant's counsel, the Apex Court held that the parties should not suffer for misdemeanour or inaction of his counsel. The relevant portion, i.e. para-3 of the SC in Rafiq and Anr. (Supra) is quoted hereunder:

3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the later appears in the matter when it is listed....

If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative.

Before this Court also, normally, party is not required to appear in an appeal proceeding and only the respective lawyers of the parties of the appeal appears and argue their respective case before this Court. As such parties in the appeal proceeding before this Court, after having done everything for engaging their respective lawyers remain sufficiently confident that their lawyers look after their interest. In the case in hand also, the review Petitioners/Appellants engaged the said Guwahati based lawyers for looking after their interest but they failed to appear before this Court after the case had been transferred to this Bench, for the reasons, may be, non-service of notice of the connected writ appeal. In the peculiar circumstances it would be an irreversible conclusion that there is no latches and faults on the part of the review Petitioners/Appellants for their failure to appear before this Bench after the connected writ appeal had been transferred from Principal Bench to this Bench.

9. As early as 1941, the Federal Court had discussed the principles governing the power of review in AIR 1941 1 (Federal Court) and held that the Federal Court will not sit as a Court of appeal from its own decisions nor will it entertain applications to review for re-hearing and also that an order once made is final and cannot be entertained. Nevertheless, in exceptional circumstances, an application for review can be entertained. The indulgence by way of review is granted mainly owing to the natural desire to prevent irremediable injustice being done by a Court of last resort as where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard. From the ratio laid down in *Raja Prithwi Chand Lal Choudhury* (supra) it is abundantly clear that review petition shall be entertained to prevent irremediable injustice being done by a Court as where by some accident, without any blame, the party has not been heard. The ratio laid down in *Raja Prithwi Chand Lal Choudhury* (supra) had been followed by the Apex Court in number of cases. The Apex Court in *Radhakrishna Dash and Others Vs. Administrative Tribunal, Bhubaneswar, Orissa and Others*, held that a party is not entitled to seek a review of a judgment delivered by the Supreme Court merely for the purpose of a re-hearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. From the ratio laid down by the Apex Court in *M/s Northern India Caterers* (supra) it is clear that application for review could be entertained when the circumstances of a substantial and compelling character make it necessary to do justice. The Apex Court reiterated the same view in *Col. Avtar Singh Sekhon Vs. Union of India (UOI) and Others*, that review is not a routine procedure but an application for review could be entertained when material error manifest on the face of the earlier order resulting in miscarriage of justice. In the case in hand, because of the manifest error on the face of record that without service of notice of the connected writ appeal had been effected to the review Petitioners/Appellants, the judgment and order dated 24.01.2005 had been passed without hearing the review Petitioners/

Appellants and thereby resulting to miscarriage of justice to the Review Petitioners/Appellants.

10. The Apex Court in *S. Nagaraj and Others Vs. State of Karnataka and Another*, had discussed the power of review contemplated in Article 137 of the Constitution of India and also the ground for entertaining the review application mentioned in Order XLVII, Rule 1, Code of Civil Procedure. In that case, the Apex Court is of the view that expression "for any other sufficient reasons" mentioned in Order XLVII, Rule 1, CPC as the ground for entertaining the review petition has been given an expanded meaning on which the Apex Court has power to make such order as may be necessary in the interest of justice or to prevent the abuse of process of Court or it is necessary to do so for the sake of justice. In *S. Nagaraj and Ors. (supra)* the Apex Court had discussed the earlier decision of the Apex Court regarding the circumstances in which the Court exercised its power on an application for review to avoid abuse of process or miscarriage of justice in AIR 1941 1 (Federal Court) and *Rajunder Narain Rae v. Bijai Govind Singh*: (1836) 1 Mon PC 117. Para 19 of the SCC in *S. Nagaraj and Ors. (supra)* is quoted hereunder:

19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order the Courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury v. Sikhraj Rai* the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it with available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijay Govind Singh* that an order made by Court was final and could not be altered:

...Nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.

Basis for exercise of the power was stated in the same decision as under:

It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualize the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And Clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLV1I, Rule 1 of the CPC Code. The expression, "for any other sufficient reason" in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL, Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.

11. The interpretation of the expression "any other sufficient reasons" mentioned in Order XLVII, Rule 1, CPC by the Apex Court in *S. Nagaraj v. State of Karnataka* (supra) had been reiterated and followed in the subsequent case, i.e. *Lily Thomas, Vs. Union of India and Others*, In *Lily Thomas and Ors.* (supra) the Apex Court had not only discussed the earlier decisions of the Apex Court in *S. Nagaraj* (supra) but also in *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, , A.R. Antulay Vs. R.S. Nayak and Another*, and held that:

The power of review is not an inherent power. It must be conferred by law. A review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures of technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court find that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error.

12. The Apex Court in *Surjit Singh and others Vs. Union of India and others*, in which the Tribunal refused to correct the mistake on technical grounds, held that: when a patent error is brought out to the notice of the Tribunal, the

Tribunal is duty bound to correct with grace its mistake of law by way of review of its orders or directions. This Court in *Ranjit Biswas v. Pabitra Narayan Choudhury*: 1996 2 GLT 92 is of the view that the expression "any other sufficient reasons" mentioned in Order XLVII, Rule 1, CPC also extend to the grounds/reasons on which the Court can entertain review petition for doing substantial justice. This Court in *Ranjit Biswas (supra)* had reviewed the earlier ex-parte judgment and order for disposing the Civil Revision on merit for doing substantial justice. This Court similarly in *Lalmalsawm v. State of Manipur*: 2000 (3) GLT 437 for doing substantial justice by interpreting the expression "any other sufficient reasons" mentioned in Order XLVII, Rule 1, CPC extended to the reasons on which application for review could be entertained for doing substantial justice had allowed the application for review for reviewing the earlier judgment and order for disposing the writ petition on merit in the absence of writ Petitioners.

For the reasons discussed above and also for doing substantial justice, the earlier judgment and order dated 24.01.2005 passed in Writ Appeal No. 512/97/WA No. 1(K)/99 is reviewed and recalled. This Review Petition is allowed. Accordingly W.A. No. 512/97/WA No. 1(K)/99 will be posted for hearing on merit before the next available Division Bench.