

(2009) 07 DEL CK 0406

In the Delhi High Court

Case No : RP No. 267/09 and CM No's. 10068-69/09 in Regular First Appeal No. 168 of 2009 and R.P. No. 268/09 and CM No's. 10071-72/09 in Regular First Appeal No. 167 of 2009

Cogent Emr Solutions Limited

APPELLANT

Vs

Shri Virendra Kumar Sharma

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114, 151
Constitution of India, 1950 — Article 226

Citation : (2009) 8 ILR Delhi 76 Supp : (2010) 6 RCR(Civil) 89

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Chetan Sharma and Divya Jain, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—By common judgment, these two review petitions are being disposed of, since common question of facts and law are involved.

2. Vide judgment dated 29th May, 2009, appeals of appellant, in both these cases were, dismissed. Now, appellant is seeking review of order dated 29th May, 2009.

3. It is contended by learned Counsel for applicants that an error of law has been committed by this Court, in confirming the order of Additional District Judge, since interest of justice mandated that Additional District Judge, while dispensing justice ought to have granted an opportunity to the appellant to lead evidence, so as to prove that the termination of the lease deed was bad and on the contrary, it was respondent who refused to accept the rental amount.

4. Second contention is that impugned order, dehors the rule of law laid down by Supreme Court in catena of judgments and in Manager, R.B.I., Bangalore Vs. S.

Mani and Others, , that failure to prove a defence, does not amount to admission nor does it reverse or discharge the burden of proof.

5. Lastly, it is contended that proof of delivery of first legal notice dated 8th July, 2008 was important to hold the termination valid and not the proof of delivery of a reminder notice.

6. Thus order dated 29th May, 2009 suffers from legal infirmities, which cannot be sustained in law and as such this order may be revived.

7. Order XLVII Rule 1 of the Code of Civil Procedure, reads as follows:

Rule 1. Application for review of the judgment:

(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 exercise 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.

(2) A party who is not appealing from a decree or order may apply for a review or judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation: The fact that the decision on question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.

8. According to above provisions, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used in this order. It may allow a review on three specified grounds, namely;

(1) discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or order was made;

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

(3) for any other sufficient reason.

9. It is also well settled that scope of an application for review is much more restricted than that of an appeal. The power of review under this provision can be exercised inter alia, only if there is a "mistake" or "an error apparent on the face of the record". The said power cannot be exercised for an erroneous decision to be "reheard and corrected". Review application also cannot be allowed to be "an appeal in disguise."

10. The error apparent on the face of the record must be such an error, which must strike one on mere looking at record and power of review is not to be confused with the appellate power which may enable the appellate Court to correct all errors of subordinate Court.

11. Further, the contentions raised and decided in main proceedings, cannot be re-opened/ re-agitated under the guise of review petition. The scope of review is for review of "error apparent" only and not to review the judgment/order, even if the parties are in a position to satisfy the court that the order under review is an erroneous order.

12. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed. Where there are two possible views regarding the interpretation or application of law vis-à-vis the particular facts of a case, taking one view, even if it is erroneous, cannot be said to be an error apparent on the face of the record. Even if a decision or order is erroneous in law or on merits, it cannot be accepted that it is an error apparent on the face of the record.

13. Apex Court in Haridas Das Vs. Smt. Usha Rani Banik and Others, while interpreting Section 114 and Order 47 of the Code laid down as under;

13. In order to appreciate the scope of a review, Section 114 of the CPC has to be read, but this Section does not even adumbrate the ambit of interference expected of the Court since it merely states that it "may make such order thereon as it thinks fit." The parameters are prescribed in Order XLVII of the CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. This is amply evident from the explanation in Rule 1 of the Order XLVII which states that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior

Court in any other case, shall not be a ground for the review of such judgment. 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. This Court in *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, held as follows:

There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

14. In *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, it was held that:

It is well settled law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, CPC. In connection with the limitation of the powers of the Court under Order XLVII, 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 *Aribam Tuleswar Sharma v. Aribam Pishak Sharma* speaking through Chinnappa Reddy, J. has made the following pertinent observations:

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 of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to be exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person 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 merit. That would be in 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 error committed by the Subordinate Court.

15. A perusal of the Order XLVII, Rule 1 show that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of record or any other

sufficient reason.

16. In Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order XLVII, Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under:

It is true as observed by this Court in Shivdeo Singh v. State of Punjab AIR 1963 SC 1908 there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of 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 of evidence which, after the exercise of due diligence was not within the knowledge of the person 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.

17. The judgment in Aribam's case (supra) has been followed in the case of Smt. Meera Bhanja (supra). In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in the case of Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, were also noted:

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.

18. It is also pertinent to mention the observations of this Court in the case of Parsion Devi and Others Vs. Sumitri Devi and Others, . Relying upon the judgments in the cases of Aribam's (supra) and Smt. Meera Bhanja (supra) it was observed as under:

Under Order XLVII, Rule 1, CPC a judgment may be open to review inter alia, if

there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, Rule 1, CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise.

14. Thus, from the bare reading of the provisions of Order 47 of the Code and the interpretation given to this provision by the Apex Court in Haridas case (supra), the position emerges as under;

(i) First and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice;

(ii) In the absence of any such error, finality attached to the judgment/order cannot be disturbed;

(iii) Where there are two possible views regarding the interpretation or application of law vis-?-vis the particular facts of a case, taking one view, even if it is erroneous, cannot be said to be an error apparent on the face of the record.

(iv) Power of review cannot be exercised for an erroneous decision to be "reheard and corrected";

(v) Power of review is not to be confused with the appellate power which may enable the appellate Court to correct all errors of subordinate Court; and

(vi) Contentions raised and decided in main proceedings, cannot be re-opened/ re-agitated under the guise of review petition.

15. None of the above requirements are satisfied in the present case, as there is no error apparent on the face of it, which calls for review of the judgment dated 29th May, 2009.

16. Question with regard to service of legal notice, has been specifically dealt in paras 34 and 35 of the respective Judgments. Thus, there is no error apparent on the face of record, which calls for review.

17. Secondly, as far as judgment of Supreme Court in Manager, Reserve Bank of India, Bangalore (supra) is concerned, it has been held, not applicable to the facts of the present case, as per finding given in paras 32 and 33 of respective judgments.

18. After going through the entire judgment and taking into consideration, the pleas taken by learned Counsel for appellant, I find that there is no error apparent on the face of record, which calls for review of judgment dated 29th May, 2009.

19. These applications for review are thus, not maintainable and the same are,

hereby, dismissed.

CM Nos. 10071-72/09 in RFA No. 167/2009

CM Nos. 10068-69/09 in RFA No. 168/2009 &

In view of the dismissal of the review petitions, these applications are also dismissed accordingly.