(2015) 10 MAD CK 0247

In the Madras High Court

Case No : Review Application No. 202 of 2015 in Writ Appeal No. 880 of 2010

C.R. Krishnan and Others APPELLANT

Vs

JRP/KRP Benefit Fund Ltd. and Others RESPONDENT

Date of Decision : 15-10-2015

Acts Referred:

Citation : (2015) 10 MAD CK 0247

Hon'ble Judges : Sanjay Kishan Kaul, C.J. and Pushpa Sathyanarayana, J.

Bench : Division Bench

Advocate : S. Parthasarathy, SC for P.C. Harikumar and Associates, for the Appellant

Final Decision : Dismissed

Judgement

Pushpa Sathyanarayana, J.—Facts, in a nutshell, go to show that the second applicant M/s. Dedicated Locker System (India) Limited purchased immovable property by availing loan of Rs. 1.5 Crores from Central Bank of India/fifth respondent herein on equitable mortgage for which the first applicant was a guarantor and in view of default in payment, the Bank filed a suit before the Debt Recovery Tribunal in O.A. No. 1118 of 1999 against M/s. Dedicated Locker System (India) Limited and its guarantors including the first applicant and obtained a decree after service of notice on 31.10.2001. It is seen that Economic Offences Wing also attached the mortgaged property. Since the depositors were not paid, W.P. No. 10255 of 2002 was filed by the Depositors'' Welfare Association of JRP/KRP Benefit Fund Limited and KRP Ecofin Services Limited seeking appointment of custodian for taking control and possession of the assets and properties both movables and immovables and securities of the second applicant herein and the respondents 7 to 9. Accordingly, after hearing the parties and considering the decree for recovery of amount obtained by the Bank and also keeping in mind the initiation of the public auction proceedings in respect of the property of the second applicant and the respondents 7 to 9, the learned single Judge disposed of the Writ Petition directing the Advocate/

Administrator to initiate necessary proceedings to bring the property for public auction and for distribution of amount to the depositors on pro rata basis as one time settlement. The said order was challenged before this Bench in W.A. No. 880 of 2010 and this Court, considering the entire sequence of events and in view of the fact that the sale had become final as there was no challenge by the applicants herein, dismissed the Writ Appeal. Aggrieved, the appellants have come forward with the instant Review Application.

2. Heard Mr. S. Parthasarathy, learned Senior Counsel appearing for the Review Applicants, Mr. S.T.S. Murthy, learned Government Pleader representing the fourth respondent/Inspector General of Police, Economic Offences Wing II, as well as the learned counsel appearing for the respondents 3, 10 and 11 and perused the records.

3. The main contention of the learned Senior Counsel for the applicants is that this Court has not taken into consideration the contentions raised by him. According to him, the property of the second applicant cannot be sold for the alleged dues of the respondents 7 to 9 which is a financial company which defaulted its depositors, that too, by way of an order in a Writ Petition. The other contention raised by the learned Senior Counsel is that the specific question raised by him Ground No. 5 of the Memorandum of Writ appeal has not been considered.

4. At this juncture, this Court wants to highlight that the very prayer in the Writ Petition was to appoint a custodian as Special Officer for taking immediate control and possession of all the assets and properties both movables and immovables and securities of the respondents 5 to 8 and pay the deposits due to the depositors. It is pertinent to point out that the second applicant herein was the fifth respondent in the writ petition and the first applicant was a guarantor and a minority shareholder.

5. Based on the above submission and in view of the admitted fact that the Central Bank of India/fourth respondent therein has obtained a decree in their favour for recovery of the said amount from the fifth respondent/second appellant herein, the learned single Judge passed the order directing the Administrator to initiate necessary proceedings to bring the property for public auction. Therefore, it is crystal clear that the first applicant, who claims to have had 33% shareholdings in the second applicant Company, having knowledge about the decree passed in respect of the auction on the property of the second applicant, had allowed the proceedings to go on in the Writ Petition. At the best, he could have challenged the sale by filing a petition to set aside the same. This aspect has been discussed and recorded in paragraph 11 of judgment in the Writ Appeal. As such, the first ground raised by the applicants fails.

6. In view of the above discussion, the grounds (b) to (d) raised in this Review Application have no substance.

7. As regards the last ground that the Writ Petition was not filed by the first

appellant/review applicant, we find no force in the said contention. Though the first applicant had not filed the Writ Petition, or even to say that he was not a party to the petition, as pointed out by us in paragraph 18 of our judgment, the liability of the guarantor is co-extensive with that of the principal debtor. Therefore, he cannot plead ignorance when admittedly he had knowledge. As such, the said ground also has been discussed in the judgment.

8. During the course of argument, it was also the endeavour of the learned Senior Counsel to convince the Bench stating that the right of redemption is lost by bringing the property, which, according to him, is a secured asset in the hands of the Bank by way of mortgage, to sale.

9. This contention of the learned Senior Counsel is only to be rejected for the simple reason that this point was not urged before this Court earlier and it is not open to him to take a new point in a review petition, as the same will amount to re-opening and re-agitating the entire issue which is not permissible under law as laid down by the Hon''ble Supreme Court in its various decisions. Having kept quiet for years together, the applicants cannot now challenge the same in the guise of review.

10. The scope and ambit of Review Application has well been explained by the Honourable Apex Court in Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs., , in the following terms:

"An application for review would lie when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. Power of review can also be exercised in the event of discovery of new and important matter. An application for review would also lie if the order has been passed on account of some mistake or for any other sufficient reason. However, the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. Review is not appeal in disguise."

11. The contentions now raised by the learned Senior Counsel for the applicants have already been dealt with by this Bench in paragraphs 11 to 22 and also the penultimate paragraph of our reasoned judgment. As such, the contentions of the learned Senior Counsel are factually incorrect and totally untenable. Unless there is an apparent error on the face of the record, this Court cannot recall its earlier decision merely because it was alleged to be erroneous. This is not a case where there is an apparent error on the face of the record. The grounds urged by the learned counsel for the Review Applicants would relate to the merits of the matter on the basis of the unfavourable conclusions. Without indicating even remotely any apparent error, the Review Applicants cannot be allowed to re-agitate the entire matter on merits. Therefore, the present attempt by the applicants is, in our opinion, to drag the proceedings and drive the innocent depositors from pillar to post without allowing them to get the fruits of the order passed by the authorities below.

Since all the points have been discussed in the judgment dated 15.07.2015 in

W.A. No. 880 of 2010 in detail, no review to the same is required and therefore, this Review Application is liable to be dismissed. Accordingly the same is dismissed but without any cost.

