

(2019) 05 DEL CK 0085

In the Delhi High Court

Case No : Review Petition No. 212 Of 2019, Civil Miscellaneous No. 23662 Of 2019 In Cont. Cas (C) 454 Of 2017

Deep Malhotra & Anr

APPELLANT

Vs

U. P. Singh & Ors

RESPONDENT

Date of Decision : 28-05-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 47 Rule 1

Citation : (2019) 05 DEL CK 0085

Hon'ble Judges : Sangita Dhingra Sehgal, J

Bench : Single Bench

Advocate : R. K. Saini, Ankit Singh, Dhanesh Relan, Komal Sorout

Final Decision : Dismissed

Judgement

Sangita Dhingra Sehgal, J

CM. No.23662/2019 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

Review Petition No. 212/2019 in CONT. CAS(C) 454/2017

1. The present Review Petition has been filed by the petitioner seeking review of the order dated 03.05.2019, passed in Contempt Case No.454/2017.

2. Notice. Mr. Dhanesh Relan, learned Standing Counsel for the respondent/DDA accepts notice.

3. Review of the final order dated 03.05.2019, has been sought by the petitioner on the grounds that the impugned order has been passed due to some confusion or miscommunication; that there was no occasion for the court to deal with and decide the contempt petition as only the new/fresh application bearing no. CM No. 21078/2019 was listed on 03.05.2019 for consideration; that as per the

order dated 25.04.2019, the respondent/DDA were to file a compliance affidavit and Commissioner (LD) DDA was also directed to be present on the next date of hearing; that till 03.05.2019 neither any compliance affidavit has been filed by the respondent/DDA in terms of order dated 25.04.2019 nor any exemption application from personal appearance of Commissioner (LD) DDA has been preferred by respondent/DDA; that on 03.05.2019 the matter was taken up only for adjudication of application preferred by the petitioner pursuant to an order dated 24.04.2019 passed by Commissioner (LD) DDA bringing to the notice of the Court the act of misconduct by Mr. Subu R, Commissioner (LD) DDA on 25.04.2019; that learned counsel for the petitioner has strongly argued that the order dated 16.02.2018 reflects that the respondent/DDA took a stand that the case for restoration of the lease deed is under process for onward transmission to the competent authority which shows that the respondent/DDA has processed the case of the petitioner positively in terms of order dated 29.03.2017 passed by this Court in W.P.(C) 11647/2017 and the respondent/DDA has malafidely passed the order dated 24.04.2019 against the true spirit of order dated 29.03.2017 passed by this Court in W.P.(C) 11647/2017 and also against their own stand taken in order dated 09.03.2017 passed by Commissioner (LD) DDA; that the case for restoration of lease deed in petitioner's case is to be decided positively by Respondent/DDA and relied upon order dated 16.12.2018 which shows that matter is to be placed before Hon'ble Lt. General for approval only; that no arguments on merits of the contempt petition were addressed by the counsel for the parties on 03.05.2019 and the petitioner was awaiting the pronouncement of order in CM No.21078/2019 only and not the main contempt petition.

4. On the other hand, learned counsel for the respondent/DDA contended that in view of order dated 24.04.2019 passed by Commissioner (LD) DDA, the present contempt petition has been rightly disposed of by this Court on 03.05.2019 and the present review petition is an abuse of the process of law and sought dismissal of the same.

5. Heard learned counsel for both the parties and perused the material on record.

6. From the perusal of the record it transpires that the present contempt petition was filed with the following prayer:

"PRAYER

It is, therefore, most humbly and respectfully prayed that this Hon'ble Court may be pleased to:-

(a) Initiate contempt proceedings against the respondent for not complying with the directions given by this Hon'ble Court in its order dated 29.03.2017 direct them to appear in person before this Hon'ble Court to explain their conduct and thereafter, they be suitably punished for committing contempt of this Hon'ble Court and heavy fine/penalty be imposed on the respondent to be paid by their own pocket for unnecessary harassing the petitioner.

(b) Pass such other or further orders this Hon'ble Court may deem fit and proper on the facts and circumstances of the case and in the interest of justice."

7. While considering the plea raised by the present petitioner, the predecessor bench of this Court on 25.04.2019 passed the following orders and fixed the matter for further hearing and compliance on 17.05.2019:

"ORDER

25.04.2019

1. On the last date of hearing, this Court had directed the respondents to file their reply, failing which the respondent was directed to be present in Court, along with the records.

2. Reply has not been filed by the respondent in terms of the last order.

3. Mr. Subu R., Commissioner, DDA, has appeared on behalf of the respondent.

4. Learned counsel for the respondent submits that in fact in this case the lease in question was determined way back in the year 1988 on account of misuse of the property by the petitioner. An eviction order was also passed, which is the subject matter of challenge under Section 9 before the Court of District Judge and the matter is still pending. An interim order against the eviction has been granted in those proceedings in favour of the petitioner. He submits that on account of the fact that the lease stands determined. DDA is not in a position to process the case for restoration of the lease. He submits that the misuse still continues.

5. Let an affidavit to this effect be filed in this Court within a period of one week from today with advance copy to counsel for the petitioner, who may file his response to the same within one week thereafter. The concerned officer is directed to remain present on the next date of hearing.

6. List on 17th May, 2019.

8. On 03.05.2019 the matter was taken up on an application moved by the petitioner raising the following grounds as noted in our order dated 03.05.2019:

"2. Learned counsel for the petitioner contended that the period of 12 weeks granted by this court had come to an end on 09.06.2017 despite which the contemnor/DDA had failed to dispose of the 2 representation. Learned counsel for the petitioner now preferred a CM No. 21078/19 for stay of order dated 24.04.2019 passed by Commissioner (LD), DDA. Arguing the present application for stay of order dated 24.04.2019, learned counsel for the petitioner contended that since no reply to the contempt petition was filed by DDA, Commissioner (LD), DDA was summoned on 25.04.2019, who despite being the author of the decision dated 24.04.2019 failed to inform the Court that the representation of the petitioner stands decided on 24.04.2019. It is further contended that in fact after appearing in Court on 25.04.2019 the order dated 24.04.2019 was

prepared, which is anti-dated and anti-timed and the same was forwarded to the petitioner to wriggle out of the contempt petition committed by the Respondent."

9. After hearing the arguments of learned counsel for the parties and also perusing the office noting of the original file produced by the respondent/DDA this Court on 03.05.2019 passed the following orders:

"6. From the perusal of the record as well as office notings of the Original file of the DDA pertaining to the case of the petitioner, it is clear that the representation has been disposed of with a speaking order on 24.04.2019 and the contempt petition has become infructuous.

7. However, it cannot be ignored that vide order dated 29.03.2017, it was directed that the representation was to be decided with a speaking order within 12 weeks by the DDA/Respondent, however, the DDA/Respondent has taken more than 2 years to decide the same. To meet the ends of justice, costs of Rs. 20,000/- is imposed on the DDA/Respondent to be paid to the petitioner within 2 weeks from today.

8. Accordingly, the present contempt petition and application bearing CM No. 21078/2019 is disposed of.

9. The petitioner is at liberty to take appropriate remedy against the order dated 24.04.2019 passed by the Commissioner (LD), DDA."

10. From the perusal of the record it transpires that W.P.(C) No.11647/2016 was disposed of on 09.12.2016 by which following directions were made:

"ORDER

09.12.2016

Though the writ petition has been filed for various reliefs, Mr.R.K.Saini, learned counsel for the petitioner states that he would be satisfied if the present writ petition is treated as a representation qua prayers (c) and (d) alone to DDA and the same is directed to be disposed of in a strict time frame.

Issue notice.

Mr.Dhanesh Relan, learned standing counsel accepts notice on behalf of the respondent-DDA. He states that the present writ petition is barred by delay and laches.

However, this Court is of the opinion that as the petitioners have made a number of representations to the respondent-DDA which have not been disposed of till date, the respondent-DDA is directed to dispose of the same.

Consequently, without prejudice to the rights and contentions of the parties, this Court directs that prayers (c) & (d) of the present writ petition be treated as a representation to the Commissioner (LD), DDA, who is directed to decide the same in accordance with law within a period of twelve weeks by way of a

reasoned order. A copy of the order shall be communicated to the petitioners by registered AD post.

In view thereof, present writ petition is disposed of.

It is clarified that pleas and defences of all the parties are left open.

Order dasti."

11. Thereafter, the respondent/DDA on 09.03.2017, passed an order with the following findings:

"The request has been considered under the policies on misuse. The averment of petitioner in respect of demised property from for the period from 1991 to 19.6.2000 cannot be acceded to as the misuse charges from 1.1.1992 to 20.6.2007 worked out to Rs.6,99,67,069/- and demand raised vide this office letter dated 14.1.2016 but the same was not served and received back undelivered. Efforts were made to serve the demand on various times but every time Shri Deep Malhotra was not available. Further he was again asked vide letter dated 14.12.2011 to make the payment alongwith 18% interest from the date of issue of demand letter till the actual date of payment but there was no response. As far policy dated 22.4.2014 is concerned it is stated the said policy has already been withdrawn and new liberalized policy dated 5.5.2016 has been introduced. As per this policy misuse is chargeable upto the date of conversion application.

In para (d) petitioner made a prayer before the Hon'ble High Court to direct in the nature of mandamus commanding/directing the respondents to forthwith take further action for conversion of the demised property into freehold in favour of petitioner, such as restoration of lease etc. without insisting on payment of misuse charges as a pre-condition.

The above prayer has been considered. In this case leased deed has been determined by the lessor/hon'ble L.G due to misusing the property. Lease deed can only be restored subject to payment of misuse charges, restoration charges and any other usual charges. There is no such pre-condition to pay the misuse charges. If petitioner wants he can file an under taking to pay the misuse charges, restoration charges and any other usual charges. The case can be submitted before the Hon'ble L.G for restoration of lease deed subject to payment of above charges. Even then petitioner has to pay the above said charges to DDA before allowing the conversion. Conversion application will be processed on receipt of above said charges. However it is interest of petitioner to pay misuse charges at their own in accordance with the policy dated 5.5.2016 to avoid further payment of interest.

In the end it is reiterated that a liberalized policy dated 5.5.2016 has been introduced and published in the various leading News Papers by DDA to pay the misuse charges. As per police applicant has to pay the misuse charges as per formula published therein at their own without demand from DDA. It has been

provided in the policy that the applicants who apply within first six months of implementations of the policy will not have to pay any interest charges on the misuse charges calculated as per new formula and thereafter interest charges of 12% compounded every six months will have to be borne by the applicant. (Copy of policy is enclosed herewith)

If the applicant wishes to apply under this policy he can deposit the misuse charges to be calculated at their own as per formula published in the policy with 12% compound interest."

12. Pursuant to the order dated 09.03.2017 passed by the DDA the petitioner preferred an application bearing no.12488/2017 in W.P.(C) No.11647/2016 for modification of order dated 09.12.2016 whereby vide order dated 29.03.2017 the following directions were passed:

"Keeping in view the aforesaid order dated 9th March, 2017, this Court modifies the last para of the order dated 9th February, 2017 by adding the following sub-para:-

"After the reasoned order, if it accedes to the prayer (c) made in the writ petition, then on payment of misuse charges, further action in the matter for conversion of demised property into freehold such as restoration of lease etc., be also taken and completed within 12 weeks thereafter."

With the aforesaid modification, present application stands disposed of."

13. Vide order dated 16.02.2018 this Court observed that

"ORDER

16.02.2018

A short affidavit has been filed by the respondents, wherein a stand has been taken that the case for restoration of the lease deed is under process for onward transmission to the competent authority. Mr. Dhanesh Relan, learned counsel appearing for the respondent DDA states, the case has since been placed before the competent authority and requests that the matter be deferred by four weeks by which time the decision of the competent authority would come. At his request, adjourned to May 9, 2018."

14. The contempt petition was preferred by the petitioner in view of the order passed in W. P. (C) 11647/2016 for the reason that the respondent/DDA failed to dispose of the representation of the petitioner by a speaking order. Since, the Commissioner (LD) DDA disposed of the representation of the petitioner by way of a speaking order dated 24.04.2019, the contempt petition became infructuous and was disposed of on 03.05.2019.

15. Moreover, the scope of a review petition lies in a narrow compass. Order XLVII Rule 1 CPC lays down the parameters of exercising review jurisdiction. The said provision makes it abundantly clear that the power of a review can be

invoked on discovery of new and important matter or evidence, which after exercise of due diligence was not within the knowledge of the party or could not be produced at the time when the judgment was passed or on the ground of some mistake or error apparent on the face of the record or for any other sufficient reason.

16. In the case of *Thungabhadra Industries Ltd. v. Govt. of A.P.* reported as AIR 1964 SC 1372, the scope of a review petition was delineated by the Supreme Court in the following words:-

"11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for 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 characterised 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."

17. In the case of *Parsion Devi v. Sumitri Devi* reported as (1997) 8 SCC 715, on a conspectus of the law laid down in *Thungabhadra Industries (supra)*, *Aribam Tuleswar Sharma v. Aribam Pishak Sharma* reported as (1979) 4 SCC 389 and *Meera Bhanja v. Nirmala Kumari Choudhury* reported as (1995) 1 SCC 170 and, the Supreme Court had held as follows:-

"9. Under Order 47 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 review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 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."

18. In a recent decision dated 03.03.2017 in the case of *Sasi (D) Through LRs v. Aravindakshan Nair and Others*, reported as 2017 (3) SCALE 383, after taking note of the aforesaid authorities that have laid down the nature, scope and ambit of review jurisdiction, the Supreme Court has reiterated that "the error has to be self-evident and is not to be found out by a process of reason."

19. In the case at hand, under the garb of a review application, the petitioner is actually seeking a re-hearing of the contempt petition that was dismissed on merits on 03.05.2019, which is impermissible. The purpose of a review application is fairly limited and it cannot be used as a tool to reargue what has

already been decided. We are therefore of the opinion that none of the circumstances contemplated under Order XLVII (sic XLVII) Rule 1 CPC have arisen in the present case and nor are the grounds taken for seeking review of the final order dated 03.05.2019, available to the petitioner for interference, in exercise of review jurisdiction.

20. On a careful analysis of the above legal position and the facts of the present case, I am of the considered view that none of the circumstances as contemplated under Order 47 Rule 1 of the Code of Civil Procedure have arisen, nor do the grounds raised in the review petition entitle the petitioner for a review. If the petitioner is aggrieved by the order dated 03.05.2019, he is at the liberty to seek appropriate legal recourse.

21. It is pertinent to mention that during the course of arguments, in compliance of the order under review, the respondent/DDA has furnished a cheque bearing no. 933668 dated 17.05.2019 for an amount of Rs.20,000/- to the learned counsel for the petitioner which he refused to accept on the ground that the order dated 03.05.2019 has not attained finality as the same is the subject matter of the present review petition.

22. Accordingly, the review petition is dismissed.