

(2014) 12 DEL CK 0103

In the Delhi High Court

Case No : Review Pet. 188/2014, CM Appl. 5366-5369 and 14453/2014 in W.P. (C) 6148/2013

Deepak Khosla

APPELLANT

Vs

Hon"ble High Court of Delhi

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 151, 153B

Citation : (2015) 1 AD 677

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Rajshekhar Rao and Vikash Pathak, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.—This review petition seeks recall of the judgment dated 04.03.2014, which dismissed W.P.(C) 6148/2013.

2. This review petition was heard on two days i.e., 28.08.2014 and on 12.09.2014. On the last date of hearing, the review petitioner primarily argued not only on the merits of the review petition, but also on the duty of the court to enable the video recording of its proceedings.

3. The court does not propose to recapitulate the entire factual controversy. The review petitioner had- in the writ petition, out of which the present proceedings arise, challenged the correctness and legality of an order of the learned Single Judge in CM 12430/2013 (in Contempt Case No. 165/2008) dated 13.8.2013, which held as follows:

"This is another application under Section 151 CPC filed, by the respondent No. 2 Mr. Deepak Khosla for early hearing and disposal of C.M 2045/2013. The prayers have also been made for various other reliefs as enumerated in prayer clause (iv) to (viii) of the instant application.

At the outset, it may be noted that having regard to the manner in which case is being conducted by the respondent No. 2 Mr.Khosla since from the receipt of this

case on transfer, the averments in the instant application attributing delay on the part of the Court are utterly false.

The proceedings speak for themselves that the case has repeatedly got adjourned only at the instance of this respondent-applicant. Further, it is also noted that the matter is already listed for hearing of the application (CM 2045/2013) as also some other applications along with the main contempt petition for 20.09.2013 and on being so informed that the previous two applications filed for early hearing within the short span were dismissed as the date for hearing was nearing and still-further, that in any case, the notice of the instant application was required to be given to the opposite side for hearing.

Mr.Khosla in his usual manner insisted for disposal of the application being CM 2045/2013. On the last date i.e. 26.07.2013, Mr.Khosla had himself sought adjournment for filing reply to the application CM 7668/2013, which was filed by his counsel for seeking discharge. Despite being informed that he was debarred for arguing for himself and for others, he insisted for disposal of the pending application/s including CM 2045/2013. Having heard him on this aspect and seeing that there was no urgency for disposal of these applications, which could be disposed of along with the main contempt petition, the matter was adjourned for hearing on the main contempt petition along with the miscellaneous applications for 20.09.2013. Again, the same issue is sought to be raised for early hearing of the said application CM 2045/2013. The averments in the instant application seeking early hearing are not only contrary to the record, but are highly irrelevant, frivolous and vexatious. The prayers which have been made are misconceived and are nothing, but trying to divert the contempt proceedings to different dimensions. In an application of early bearing, such pleadings and prayers are uncalled for. Having seen the conduct of the applicant Mr.Khosla in filing application after application and not even letting the case to proceed on merits, this application is another tactic for delaying the hearing in the main case. In this state of affairs, I am constrained to dismiss this application with cost of Rs. 20,000/-, and also with a direction to the Registry not to register/list any application of Mr.Khosla in this case without the leave of this Court, and also until the cost is deposited with Delhi High Court Legal Services Committee.

CM stands dismissed accordingly."

4. In the review petition, it is urged that this Court did not deal with the grievance made out in the petition, which was that the order of the learned Single Judge was without jurisdiction. According to the review petitioner, this court "skirted" the issue in its judgment. It is secondly urged that the decision in Kiran Singh v. Chaman Paswan AIR 1954 SC 340 was not appreciated in the correct perspective, in that the ratio there clarifies that a void order can be challenged at any stage, even in collateral proceedings. It is urged in this context that the decision in Kiran Singh has been affirmed and applied in several other decisions, and that the imposition of costs outside the framework of the Code of Civil Procedure, and the prescribed rules, resulted in a fatal infirmity in the order

of the Single Judge impugned in the writ petition.

5. The review petitioner argues that Kiran Singh constitutes binding precedent, because the rule requiring a litigant to exhaust normal appellate remedies provided by statute, is one of convenience and not an inflexible one. In this context, it is urged that the decision in Nivedita Sharma Vs. Cellular Operators Assn. of India and Others, is not a binding precedent, as it is contrary to at least 13 previous Supreme Court rulings which say that an order which contravenes a statutory provision is a nullity and can be challenged in writ proceedings.

6. A charge of bias against the members of this Court for not granting adequate time to the petitioner at the time of hearing has been urged as a ground in support of the petition. It is also stated - as a separate ground that there is a kind of bias unbeknownst to the petitioner, because members of the present Bench have not made any order which favours Mr. Deepak Khosla at all. One ground urged in support of the petition is that though 110 grounds were averred in the pleadings, none were referred to in the judgment.

7. On 12.09.2014, (when the Court, after hearing Mr. Khosla, reserved judgment in the writ petition) it was argued that this Court is under a duty to record or permit video recording of the proceedings, to promote transparency and eliminate the possibility of error, as well as avoiding situations where counsel and parties urge certain grounds in oral hearings, which are not reflected at all in the judgment delivered in the matter, on account of not being recorded in Court, as there is no system of transcribing oral submissions. Mr. Khosla referred to the view of the previous elected Government of Delhi, which had - as a policy decision - decided to require video recordings of court proceedings. It was argued that the public interest in favour of such recording of court proceedings promotes the concept and idea of open court, and brings veracity and transparency. In the long run, it cuts down the hearing time and eliminates frivolous arguments. The other contentions by Mr. Khosla were summarised in the order recorded on that date and are extracted below:

"Mr. Khosla resumed his arguments in the review petition, and during course of submissions, urged that there is no bar with respect to audio video recordings of arguments in Court and that this aspect is integrally connected with the hearing of the present review petition. He relied upon the reply to RTI queries given by the Delhi High Court establishment about existence of Rules and pointed out that the Mediation rules contain a bar. Likewise, he made submissions with regard to the issuance of the Circular by the Chairman of the Company Law Board on 20.02.2014. Mr. Khosla further drew the attention of the Court and relied upon the judgment of the Court passed in W.P.(C) 12789/2009 dated 25.02.2011 and stated that the final order was premised on the existence or otherwise of a duty and not on the merits of the audio recording of proceedings by the Courts. He pointed out to the Court that in other proceedings, permission has been granted by the District Judge at certain points of time pursuant to which audio recording was conducted in matters pending before the Metropolitan Magistrate. He also

relied upon the decision taken by the then Law Minister of the Government of NCT of Delhi on 13.02.2013 whereby the proposal to amend Section 153B of the CPC to enable recording of Court proceedings and its publication, was made. Reliance was also placed upon the order of the Punjab and Haryana High Court in S.P.S. Rathore v. C.B.I, Criminal Misc. No. M-21101 of 2008 dated 5.11.2009 where video recording of a criminal trial was permitted."

8. As may be seen from the above discussion, what occasioned the filing of the writ petition which led to the order dated 04.03.2014 was the order of a learned Single Judge, which refused to list an application ahead of the date fixed for its hearing. As can be seen from the tenor of the order, Mr. Khosla appears to have insisted that the early hearing application should be granted. The learned Single Judge refused to exercise his discretion and dismissed the early hearing application; he also directed payment of Rs. 20,000/- as costs and in default thereof directed the Registry of this court not to list any application. The learned Judge had noted that:

"Having seen the conduct of the applicant Mr.Khosla in filing application after application and not even letting the case to proceed on merits, this application is another tactic for delaying the hearing in the main case."

9. Mr. Khosla's endeavour was to restate the arguments made in support of the writ petition. To the extent the review petition urges the court to re-appreciate precedent, we are of opinion that such an exercise is not within the power of the Court, given the restricted scope of review jurisdiction. As held in Parsion Devi and Others Vs. Sumitri Devi and Others,

"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 limited purpose and cannot be allowed to be "an appeal in disguise."

Likewise, in Ajit Kumar Rath Vs. State of Orissa and Others, , the Supreme Court said:

"A review cannot be sought merely for a fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it."

10. Specifically, on the question of jurisdiction of the Single Judge, in dismissing the application for early hearing and directing payment of costs, the order of the Division Bench, dismissing W.P.(C) 6148/2013 was as follows:

"The Court, while passing the impugned order, granted an appropriate oral hearing to the parties and a reasoned decision was pronounced by the Court

subsequently. The reasons provided by the order may be correct or incorrect, but so long as the Court is properly seized of the matter, and it falls within its jurisdiction, the assessment of the merits of the impugned order is to be conducted in appropriate appeal/review proceedings, and cannot be interfered with through the writ jurisdiction of this Court, within the limited power of judicial review."

11. The grounds sought to be urged with regard to mis-appreciation of judgments of the Supreme Court, and the specific question of jurisdiction, were dealt with on merits by the judgment dismissing the main writ petition. An erroneous view - as repeatedly held by the Supreme Court - is not capable of being corrected in review proceedings. Therefore, there is no merit in the submissions with regard to the grounds in review i.e., appreciation of law and the question of jurisdiction.

12. So far as the Court not granting hearing is concerned, the Court notes that the petitioner's ground - i.e. No. 13, reveals that substantial time was given for hearing. However, the complaint is that the hearing was closed or "truncated" at 1:15 PM. This ground is insubstantial because the petitioner was, by his own admission, given a fair amount of time to address arguments, which he did. The last ground, bias, is meritless because Mr. Khosla does not substantiate the allegation.

13. As regards the submission of Mr. Khosla, that Court rules and procedures should facilitate, nay, enable video recording of proceedings because of the public interest in transparency, this Court is of the opinion that a review petition cannot be a platform to consider such substantive aspects. The merits and demerits of such a decision have to be deliberated and considered at a wider plane as it involves a balance between the individual rights of litigants, or even a class of them who wish it, and those, whose interests the Court would be obliged and duty-bound to protect, given the volume and diversity of litigation that the judicial system has to deal with in the country. The views expressed and the experience gained in other jurisdictions, which have challenges based on their own societies, while providing some guidance, cannot define what ought to be done in this respect, considering the number and variety of cases that courts have to adjudicate in India - even the number of applications and repeated listings of a single case which the court has to deal with. Therefore, anecdotal references to some instances where courts agreed to permit video recording, cannot be viewed as precedent that compels the judicial system to adopt that course. Equally, the policy choice indicated in a Govt. of NCT memo which did not translate into anything more - certainly serious enough in that it undermines the autonomy of courts to regulate their proceedings - cannot be an argument to compel video recordings, as a policy to be followed universally, or to permit such video recordings.

14. For the above reasons, the Court is of opinion that the review petition lacks in merit. It is accordingly dismissed.