

(1961) 06 CAL CK 0017

In the Calcutta High Court

Case No : Review Application in C.R. No. 1783 of 1958

Dilip Nath Sen

APPELLANT

Vs

Certificate Officer and Others

RESPONDENT

Date of Decision : 13-06-1961

Acts Referred:

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

Citation : AIR 1962 Cal 346

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : S.K. Das, Kartik Chandra Banerjee and Nirmal Kumar Sadhu, for the Appellant; Balai Lal Pal, for Nos. 2 and 3, N.C. Chakravarty and S.K. Banerjee for No 1 and Dwijendra Nath Basu, for Nos. 4 and 8, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—This is an application for review of a judgment passed herein by me on the 22nd December, 1960 by which the application was dismissed and the rule was discharged. The facts are shortly as follows: For the Income Tax "assessment year 1945-46 "Messrs. Sen and Co., Proprietor Sri Panna Lal Sen"" was found liable to pay a certain sum as arrears of Income Tax and a certain penalty was imposed u/s 46(1) of the Income Tax Act. Thereafter, the Income Tax Officer forwarded to the Certificate Officer, 24 Parganas, a certificate for the said amount and on the 31st March 1955 a certificate was filed by the Certificate Officer, 24 Parganas. In the certificate as filed, there was a clerical error. Notice u/s 7 of the Act was served on the certificate debtor but before he could object Panna Lal Sen died. At the instance of the heirs and legal representatives of Panna Lal Sen, the matter was adjourned from time to time and ultimately an application was made by the petitioner u/s 37 of the Public Demands Recovery Act. This objection was rejected and a rule was taken out from this Court. Various points were taken in support of the application, which have been fully discussed in my judgment dated 22nd December, 1960. As stated above, the

application was dismissed and the rule was discharged. Now this application for review has been made on the ground that on the 16th September, 1960 a Division Bench of this Court presided over by Banerjee J., has by Judgment delivered on September 16, 1960, in the case of Satish Chandra Bhowmick v. Union of India, being C.R. No. 2023 of 1960, 2024 of 1960 and 4074 of 1959 (Cal) held inter alia that the Form of the certificate of Public Demand under Sections 4 and 6 of the Public Demands Recovery Act, being Form No. I (Bengal Form No. 1027) set out in the Appendix to the Rules Schedule II of the said Act, was materially different from the statutory Form, as prescribed by Notification No. 1637 O. C. P. dated the 28th December 1956 published in the Calcutta Gazette dated January 12, 1956 by the Board of Revenue. It is stated now that the form of the certificate in the present case is the same as was struck down by the said judgment and therefore, there should be a review of the order, and upon that ground the order made by me on the 22nd December, 1960 should be set aside and varied. It is stated that at the time the case was heard and judgment delivered by me, the petitioner and his lawyer did not know of the said Division Bench, judgment which has now been reported in 65 Cal WN 324. There is another fact which is relevant for the purposes of this application. Consequent upon the said Division Bench judgment, an Act has been passed, being Act No. II of 1961 whereby, the difficulty caused by the said judgment has been removed. Under the said amendment the certificate issued in this case is in proper form. Faced with this. Mr. Das appearing on behalf of the petitioner has taken an additional ground in this application to the effect that the said Act II of 1961 is ultra vires inasmuch the subject-matter of the amendment comes within the concurrent list of the 7th Schedule to the Constitution, and as the Public Demands Recovery Act and the rules framed thereunder are, "existing Laws," there cannot be an amendment or alteration which is repugnant to the provisions of the such existing law, not having been reserved for the consideration of the President and not having been received his assent under Article 254 of the Constitution.

2. The learned Government Pleader and Mr. Pal appearing on behalf of the respondents have contested this application on two grounds- The first ground is that an application for review does not lie in respect of an application under Article 226 of the Constitution. The second point is that assuming such an application lies, the conditions which permit a review do not exist in this case. The fact that the petitioner was unaware of the particular ruling at the time when the case was disposed of, does not constitute an error on the face of the proceedings or any of the grounds on which a review application can be maintained under Order 47 of the Civil Procedure Code.

3. Coming now to the first point, there appears to be some conflict of authority. In a Division Bench Judgment of the Madhya Bharat High Court, Haji Suleman v. Custodian Evacuee Property, (S) AIR 1955 Madh B 108 it has been held that high prerogative writs were issued under Art, 226, and there was no provision therein by which an order once made could be altered, modified or vacated by way of a

review. On the other hand, in a Division Bench of the Madras High Court, *C. Chenchanna Naidu Vs. Praja Seva Transports Ltd., Cuddappah and Another*, it has been held that in the case of an application for a writ under Article 226, made on the civil side of the High Court, the provisions of the CPC apply and the High Court has jurisdiction to review its own order. In a Bombay case, *S.P. Awate Vs. C.P. Fernandes and Another*, Chagla C. J. was dealing with a case of review of an application under Article 226. Although it does not appear to have been specifically argued that an application for review does not lie in this jurisdiction, the learned Chief Justice held that the High Court had power of review in such an application, but that the power was very limited. It was held that where a decision was challenged on the ground that there was an error apparent on the face of the record, the error, contemplated was an error so manifest, so clear, that no Court would permit such an error to remain on the record. In my view, the Madras and Bombay views are the correct view. Article 226 of the Constitution gives power to the High Courts to issue writs and make orders in the same fashion as are made in the King's Bench Division in England. The procedure however has not been set out in the Constitution, and in civil cases the procedure will be such as is laid down in the CPC or the rules framed by the Court. I do not see, therefore, why in a proper case an application for review should not lie. The question, however, is as to whether, upon the facts and circumstances of this case, a review application can be maintained. The grounds on which an application for review of judgment can be made have been laid down in Order 47 of the Civil Procedure Code. A review application would lie where a party has discovered new and important matters or evidence, which, after the exercise of due diligence was not within his knowledge and could not be produced by him at the time when the order was made, or where there was some mistake or error apparent on the face of the record, or for any other sufficient reasons. The sufficient reason must be on grounds analogous to those specified previously. In this particular case, the ground is that at the time when the order was made the petitioner and his lawyer was not aware of a certain ruling. That, however, has never been considered as a ground for review. See *Juli Mean v. Atar Din* AIR 1935 Rang 32. So far as this High Court is concerned, this position has been laid down as early as 1875, in *Ellem v. Basheer* ILR 1 Cal 184 by a Division Bench presided over by Sir Richard Garth, C. J. It was held that the production of an authority, which was not brought to the notice of the Judge at the first hearing and which lays down a view of the law contrary to that taken by the Judge, is not a sufficient ground for granting a review. The learned Chief Justice stated as follows:

".....the Subordinate Judge of Sylhet reviewed his own decisionhe gives as a reason for the review that he was referred by the pleader to two authorities, decided by the High Court many years ago, one of which he considered to be opposed to his former judgment. He, accordingly, made an order for the review, and reversed his previous decision.

But the case appears to us to depend upon, precisely the same principle as the

last, and must be decided in the same way. It is less objectionable, no doubt, in one, sense, for a Judge to review his own decision than that of his predecessor's; but he has no more right to do so without sufficient reason in the one case than in the other; and we cannot consider that the production of an authority to which the attention of the Judge was not called at the first trial, is Sufficient ground for demanding a second trial. The parties ought to come prepared with all their materials, both of law and facts at the first hearing, and if they do not come properly prepared, they ought not to be allowed upon discovering that they had omitted to bring forward some decided case, to try the case over again upon the strength of their own omission. If the Judge had decided improperly upon a point of law, that would be a matter for appeal, not for review."

4. Apart from this proposition it is obvious that there is great difficulty in holding that there was an error on the face of the proceedings. Assuming that this Court is capable of taking notice of the Division Bench judgment at this stage, in this application, the position is that a new statute has been promulgated which has nullified its effect. That it purports to nullify its effect is not disputed. What is now sought to be argued is that the Amending Act is ultra vires the Constitution and therefore, should be declared as bad. This proposition is of course strongly contested and to quote Chief Justice Chagla in the Bombay case cited above, such a position in law is not manifestly clear, and there is no error on the face of the proceeding,, and there can be no order for review. It would be strange if in a review application the question of ultra vires should be decided.

5. The result is that in my opinion the application for review is misconceived and does not lie and this application should be dismissed. There will be no order as to costs.