

(2009) 04 BOM CK 0143

In the Bombay High Court

Case No : Civil Application (Review) No. 5 of 2009

GKP Builders

APPELLANT

Vs

Shri Jose Cordeiro, Chartered Accountant and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

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

Citation : (2009) 04 BOM CK 0143

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : S.D. Lotlikar, for the Appellant; Sudin M.S. Usgaonkar, for the Respondent

Final Decision : Dismissed

Judgement

C. L. Pangarkar, J.—Rule, returnable forthwith. Heard finally with consent of the parties.

2. These two review applications can be decided by a common judgment.

3. The applicants are the original petitioners in Writ Petition Nos. 66/2009 and 67/2009. The facts giving rise to these review applications, are as follows : The applicants had filed an application objecting to the execution proceedings filed by the respondent Nos. 1 to 5. The respondent Nos. 1 to 5 had obtained a decree of injunction and thereafter they had put that decree to execution. After that decree was put to execution, the present applicants filed an application objecting to the execution of the decree. Their application came to be rejected. Hence, they had preferred the writ petitions. Those writ petitions were decided by this Court by a common order passed on 17th February, 2009. The writ petitions were dismissed. The applicants, therefore, seek review of that order passed in the writ petitions.

4. The review is sought on the ground that while passing the order, this Court committed an error which is apparent on the face of record.

5. I have heard the learned Counsel for the applicants and the respondents.

6. The scope of the review is always very limited. It must be borne in mind that the review cannot be heard as if it is an appeal. The Supreme Court in *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, has observed as follows:

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. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that 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. No questions of fact were involved in the decision of the High Court in T.R.Cs. 75 to 77 of 1956. The entire controversy turned on the proper interpretation of Rule 18(1) of the Turnover and Assessment Rules and the other pieces of legislation which are referred to by the High Court in its order of February 1956; nor could it be doubted or disputed that these were substantial questions of law. In the circumstances, therefore, the submission of the appellant that the order of September 1959 was vitiated by "error apparent" of the kind envisaged by Order XLVII, Rule 1, CPC when it stated that "no substantial question of law arose" appears to us to be clearly well founded. Indeed, learned Counsel for the respondent did not seek to argue that the earlier order of September 1959 was not vitiated by such error.

7. It is thus, apparent that even an erroneous decision cannot be corrected in review. This Court while deciding the writ petitions, has already observed that an application purporting to be an objection to the execution of decree, is not maintainable since the decree sought to be executed is one for injunction and not possession. The learned Counsel for the petitioners, could not show how the decision on this question of law is the mistake apparent on the face of record.

8. This Court has also observed about the interpretation of status-quo order passed by this Court on stay application. It has been held that the "status-quo; would mean the status-quo of things as observed and as held by the Court in that judgment. I do not find that this proposition, needs any reconsideration.

9. The main thrust of the argument was on the following observations of this Court:

The order that has been passed by the Civil Court on temporary injunction application, is in ignorance of the findings of the Court.

10. This observation appears to be not correct as the dates of the judgment and order of injunction would show that the injunction application was decided on 05.03.2005 and the judgment in Civil Suit No. 104/2001, was delivered on 28.06.2005. Obviously, when the temporary injunction application was decided, the judgment was not delivered. Hence, it could not have been observed that the order of the temporary injunction was passed in ignorance of the findings in the suit. The judgment in Civil Suit No. 104/2001 would, on the other hand show, that this order of injunction was placed before the Court before the delivery of the judgment and that Court has considered the effect of the order and yet has passed the decree. The above observations, however, do not turn the table though they were apparently wrong. It has been found that the application itself was misconceived. Therefore, even if the observations were wrong, the decision cannot change. No mistake apparent on the face of record, which would affect the decision, has been urged and shown. In view of this, I do not find any substance in the review applications. They are dismissed.