
(1996) 12 AP CK 0030

In the Andhra Pradesh High Court

Case No : Rev. C.M.P. No. 7184 of 1996

His Holiness Sri Devendradoss

APPELLANT

Vs

Sri Sarjudoss and Others

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

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

Citation : (1997) 1 ALT 554

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : M. Venkateswarlu, for the Appellant; P. Ramachandra Reddi, for Respondent No. 1, N.V. Suryanarayana Murthy and G.P. for Education, for the Respondent

Final Decision : Dismissed

Judgement

G. Bikshapathy, J.—This review petition has been filed seeking review of the decree and judgment of this Court, rendered in S.A. 12/92, dated 11-7-1995.

2. The Second Appeal 12/92 was filed against the judgment and decree in A.S. 172/88 dated 25-9-1991 on the file of the learned Additional District Judge, Tirupati, confirming the judgment and decree passed in O.S. 167/1979 dated 27-10-1988 on the file of the Principal Subordinate Judge, Tirupati. After considering all the contentions advanced on behalf of the parties and after going through the material on record this court by judgment dated 11-7-1995 dismissed the second appeal with costs. Against the said judgment and decree the petitioner filed this review petition.

3. Mr. M. Venkateswarlu, learned Counsel for the review petitioner-appellant urged the following grounds viz.,:-

(1) that the learned Counsel who appeared before this Court at the time of the hearing of the second appeal has not correctly placed material before this Court and did not advance certain crucial contentions;

(2) that there were errors apparent on the face of the record;

(3) that although the finding of the Courts below to the effect that the plaintiff had resigned was not based on record as no resignation letter was produced before the Courts below, the said finding was accepted by this Court erroneously; and

(4) that this Court has not considered the relevant material in dismissing the second appeal.

In support of his contentions, the learned Counsel for the review petitioner relied on the following decisions viz., AIR 1944 11 (Privy Council); C. Chenchanna Naidu Vs. Praja Seva Transports Ltd., Cuddappah and Another, ; The Roman Catholic Mission Vs. State of Madras and Another, ; Burma Shell Oil Storage Distributing Co. of India Ltd. Vs. Labour Appellate Tribunal, ; Benoy Krishna Rohatgi and Others Vs. Surajbali Misra and Another, ; and M.M.B. Catholicos v. M.P. Athana Sius AIR 1954 SC 526.

4. Repelling the contentions of the learned Counsel for the petitioner Shri N.V. Suryanarayana Murthy, learned Counsel for the fourth respondent submits that this is not a fit case for review. In the guise of filing the review petition, the petitioner is trying to reopen the entire matter which is not permissible in law. He also submits that the ingredients of Order 47, Rule 1 are not present in the present case. Therefore, the review petition has to be dismissed in limine. In support of his contentions, he relied on the decisions in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, and Manduva Srinivasa Rao Vs. Sajana Granites, Madras and others, .

5. Having regard to the rival contentions the question that arises for consideration is whether this review petition is maintainable.

6. As far as the first contention is concerned, it is to be noted that the learned Counsel who appeared in the second appeal before this Court on earlier occasion has taken all possible contentions and the same were considered by this Court. Therefore, it would not be fair to contend by the present Counsel that the Counsel who appeared on the earlier occasion did not advance certain crucial contentions and failed to place correct material before this Court.

7. The learned Counsel for the petitioner advanced his second contention basing on Order XLVII, Rule 1 which reads as follows:-

"Order XLVII; Review:

Rule 1. Application for review of Judgment-

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

(2) xx xx xx xx

8. It is not in dispute that for a review to be made the requirements under Rule 1 of Order 47 have to be necessarily complied with. The contention, that although there were errors apparent on the face of the record, this Court by misconstruing the facts rendered an erroneous judgment, is untenable. Since the Courts below recorded the findings on facts, this Court refused to reappreciate the evidence and interfere with the concurrent finding of fact to verify as to whether those findings are properly arrived at or not. It was also observed by this Court in the judgment that the finding of facts recorded by the Courts below cannot be assailed. Hence the contention advanced in this behalf does not merit acceptance.

9. As far as the third contention, to the effect that the parties have not at all filed resignation letter before the Court and the finding in this regard should be construed as a finding without any evidence, is concerned, the same is also without merit as there is a categorical finding recorded by the trial Court to the effect that the plaintiff has resigned from the post of Mahantship on 10-11-1978.

10. Coming to the last contention, that this Court has not considered the relevant material in dismissing the second appeal, I am afraid, I cannot accept this contention. It is well settled that a party is not entitled to seek a review of judgment delivered by the Court merely, for purpose of rehearing and fresh disposal. The normal principle is that a judgment pronounced by the Court is final and departure from the principle is justified only when circumstances of substantial and compelling character make it necessary to do so (see AIR 1980 SC 574).

11. Having given my anxious consideration to the matter, I am of the firm view, that it is neither a case of error apparent on the face of record nor case of some mistake. Virtually the learned Counsel for the petitioner tried to argue the matter as if he is arguing the second appeal for the first time. As already stated, review of a judgment is permissible only within certain specified limits as contained in Order 47, Rule 1 C.P.C. In the guise of review, the party cannot argue the matter afresh and try to persuade this Court to take a different view from the one already taken. For the aforesaid reasons, I find the review petition is not maintainable. Accordingly the review petition is dismissed. No costs.