

(2008) 10 KAR CK 0050
In the Karnataka High Court
Case No : Review Petition No. 44 of 2008

Karnataka Horologicals Ltd.

APPELLANT

Vs

Karnataka State Industrial Investment and Development
Corporation Ltd. and Others

RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
State Financial Corporations Act, 1951 — Section 29, 29 (2), 29 (3)

Citation : (2009) 5 KarLJ 88 : (2009) 5 KCCR 3755

Hon'ble Judges : S.R. Bannurmath, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : J. Kanikaraj, for the Appellant; R1 KSIIDC SD, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—This Review Petition has been filed against the judgment dated 4.1.2008 passed in W.A. 165/2007(L) c/w W.A. 447/2007(L) in Karnataka State Industrial Investment and Development Corporation Ltd. Vs. Karnataka Horologicals Ltd., Karmikara Sangha and Others, The prayer is to review the said judgment and to hold that the appellant in W.A. 165/2007 is fully liable to satisfy the claim of workmen and the appellant in W.A. 447/2007 (the petitioner herein) is not liable to any extent to satisfy the claims of workmen or in the alternative, hold that the appellant in W.A. 165/2007 is holding a sum of Rs. 14.13 lakhs in excess and to direct the payment of the said sum to the Respondent Union in full satisfaction of its claim and to delete the direction in the judgment to the effect that, the workmen are entitled to the closure compensation from the petitioner herein.

2. Notice was issued to the respondents who are represented. With the consent of learned Counsel appearing on both sides, the matter is heard for final disposal.

3. It is not necessary to narrate the facts in detail in the present Review Petition, since, they have been stated in the main order. The 2nd respondent union had

raised a dispute against the lockout declared the petitioner (for short "Industry") with effect from 6.8.1994. A reference was made to the Industrial Tribunal in I.D. No. 25/1995 for adjudication on the terms of reference. The Tribunal by an Award dated 29.4.2000 directed the Industry to pay lockout period wages and suspension allowance from 8.7.1994 to 7.10.1994 and the 1st respondent namely KSIIDC (for short "Corporation") to consider the claim of the Workmen for the period from 6.8.1994 to 7.10.1994 and after 7.10.1994 M/s. Prime Technologies (for short "Purchaser") to consider the demand of the Workmen. The said award was questioned in W.P. 5332/2003 by the Industry, in W.P. 35393/2000 by the Corporation and the Purchaser filed W.P. 1172/2000. Writ petition filed by the Purchaser was allowed exonerating it from the liability and the writ petitions filed by the Industry and the Corporation were dismissed directing them to jointly and severally settle the claim of the Workmen. Both the Industry and Corporation filed W.A. Nos. 447/2007 and 165/2007 respectively. The order allowing the writ petition filed by the Purchaser remained unchallenged. Considering the contentions of the parties in the said writ appeals, the following points were raised for consideration;

1) Whether the "Corporation" was justified in exercising its rights u/s 29 of SFC Act, to take over the assets of the Industrial Concern to realise the dues?

2) Whether the amount realised by the Financial Corporation from sale of assets of the Industrial Concern in exercise of its rights u/s 29 of the SFC Act, be ordered to be paid by it, to the Workmen of the Industrial Concern, by applying the provisions of Section 529A of the Companies Act, when the Industry/ Company, is not under winding up proceedings?

3) Whether the learned Single Judge is justified in directing the Corporation to satisfy the award, jointly and severally?

4) Against whom the Workmen can proceed to realise the closure compensation and other dues?

4. After hearing the learned Counsel, by a common judgment, writ appeal filed by the Corporation was allowed, the order passed by the learned Single Judge dismissing W.P. 35393/2000 was set aside and the said writ petition was allowed quashing the award passed by the Tribunal in so far as the award was against the Corporation. Writ appeal filed by the Industry was dismissed and order passed by the learned Single Judge was modified and it was held and ordered that, the management of M/s. Karnataka Horologicals Ltd., shall pay the wages of the lockout period of closure compensation to the Workmen and that it alone shall be liable to satisfy the award passed by the Industrial Tribunal. Seeking review of the said judgment, the present petition has been filed.

5. We have heard Sri. S.K.V. Chalapathy, learned Sr. Counsel for the petitioner, Sri. Puttige R. Ramesh, learned Counsel for the Corporation, Sri. R. Gopalakrishna, learned Counsel for the Purchaser and Sri. A.J. Srinivasan, learned Counsel for the Union and the Workmen and also perused the record.

6. At the outset, Sri. S.K.V. Chalapathy, learned Sr. Counsel submitted that, the petitioner is not seeking review of the findings in respect of points 1 and 2 raised for consideration and decided in the writ appeal. Learned Sr. Counsel submitted that, the present Review Petition is only confined to the findings and decision on point 3 (part) and point 4 of the said judgment.

7. In order to appreciate scope of a review, it is necessary to keep in view Section 114 of CPC and the parameters prescribed in Order 47 of CPC, to find out whether, on account of some mistake or error apparent on the face of record or any sufficient reason, the said judgment requires review. It is also necessary to notice the law declared by the Hon"ble Supreme Court on the scope of review.

7.1. In the case of Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, with regard to ambit and scope of Order 47 Rule 1 CPC, it has been held as follows:

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 if by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

(Emphasis supplied by us)

7.2. In the case of Smt. Meera Bhanja v. Smt. Nirmala Kumari Choudhury reported in AIR 1995 SC 445, it was held that;

It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with the limitation of the powers of the Court under Order 47, Rule 1, while dealing with the similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court in the case Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, , speaking through Chinnappa Reddy, J., has made the following pertinent observations.

It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent mis-carriage of justice or to correct grave and palpable errors committed by it.

But, there are definitive limits to the exercise of the power of review. The power

of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the Review Petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the fact of the record:

An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the fact of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ.

(Emphasis supplied by us)

Under Order 47 Rule 1 CPC, a judgment may be open to review, if there is a mistake or 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 cannot be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule 1 CPC. It is settled position of law that, under the said provision it is not permissible for an erroneous decision to be re-heard and corrected and the Review Petition cannot be allowed to be "an appeal in disguise".

7.3. When the aforesaid principles are applied to the background facts of the present case, it is clear that, no case has been made out for reviewing the aforesaid judgment, since, there is neither a mistake or error apparent on the face of the record, much less any sufficient reason to review the judgment. Be that as it may.

8. Sri. S.K.V. Chalapathy contended that, in view of the power conferred on the Corporation u/s 29 of the State Financial Corporation Act 1951 (for short "the Act") both to take over the management or possession of the defaulting Industrial concern, the Corporation should have taken over the management and acted as a Trustee and thereby protected the interest of Industry and the Workmen. Incidentally, it has to be observed that, the Industry had not taken any kind of exception to the action of the Corporation u/s 29 in taking over the possession as well as in the matter of sale and its consequential transfer to the purchaser. Hence, after long lapse of time and at this stage, it is not open to the Industry to contend that the Corporation instead of taking possession and selling the same, should have taken over the management or managed the industrial concern which has committed the default. To answer the contention, it is necessary to notice the law declared by the Hon"ble Supreme Court with regard to the scope of power u/s 29 of the Act, on the Corporation.

8.1. In the case of Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, , Section 29 of the Act has been analysed and it has been held as follows:

9. An analysis of Section 29 of the Act reveals that where any industrial concern which is under an obligation and a liability to the Corporation under an agreement makes a default in repayment of the loan or advance or any instalment thereof or otherwise commits breach of any of the terms of the agreement, the Corporation has the right to take over the management or possession or both of the defaulting industrial concern. It also has the right to transfer by way of lease or sale and realise the property pledged, mortgaged or hypothecated or assigned to the Corporation as security for the loan. Any transfer of property of the defaulter thereafter made by the Corporation shall vest in the transferee all rights in or to the property transferred by virtue of Section 29(2) of the Act. Vide Section 29(3) of the Act, the Corporation has the same rights with respect to the goods manufactured, or produced wholly or partly as it had in respect of the original goods forming part of the security. Section 29 of the Act, therefore, deals with not only the rights of the Corporation in cases of default by the industrial concern, but also provides for a remedy to take over the management of the defaulting industrial concern with or without possession as well as the right to transfer by way of lease or sale of the hypothecated property to realise its dues. Since Section 29 of the Act provides both the rights and the remedies as also the procedure for enforcement of the rights and is a complete code in itself, it is open to the Corporation to act u/s 29 of the Act to realise the dues from the defaulting concern by following the procedure prescribed u/s 29 of the Act. The Corporation does not require the assistance of the court to enforce its rights while invoking the provisions of Section 29 of the Act to recover its dues from the defaulting concern.

Also considering the provisions contained in Section 31 of the Act and the principles of "Doctrine of Election", it was held as follows:

17. The relief available to the Corporation u/s 29 of the Act to realise its dues in the manner prescribed therein is wider in scope than the limited reliefs available to it u/s 31 of the Act and is not controlled by Section 31 of the Act. The Legislature clearly intended to preserve the rights of the Corporation u/s 29 of the Act, by expressly stating in Section 31 of the Act, that its recourse to action under that section is without prejudice to the provisions of Section 29 of the Act, What alone is not desirable or permitted by the Act is to pursue both the remedies simultaneously by the Corporation and not that it cannot withdraw or abandon the proceedings initiated u/s 31 at "any stage" and then take recourse to the provisions of Section 29 of the Act. Any interpretation which frustrates the right of the Corporation to recover its dues must be eschewed. Similarly, if in a given case, the Corporation has taken recourse to the provisions of Section 29 of the Act, there is no bar for it without taking those proceedings to their logical conclusion to abandon them and approach the court u/s 31 of the Act to seek one or more of the reliefs available to it under that section.

(Emphasis supplied by us)

8.2. The further contention canvassed by the learned Sr. Counsel for the petitioner is that, if the Corporation had taken possession of the assets in exercise of power u/s 29 of the Act, it could not have entered into an agreement with the purchaser that, the purchaser is not liable for the claims of the labour and that, such an agreement could not have been entered into unless the Corporation takes over as well, the management of industrial concern. It was contended that, since, under the agreement, the purchaser was exonerated of all the liabilities to satisfy the claims of the labour, it follows that, the Corporation held itself liable to satisfy the Workmen claims pending, when the agreement came into force.

We do not find any merit in the contention. It has to be noted that, the power of the Corporation to take over the possession of the defaulting borrower was not questioned by the Industry, which had admittedly become a defaulter and cannot indeed be questioned, in view of the express provision contained u/s 29 of the Act, regarding which, the Hon"ble Supreme Court has repeatedly held that, the Corporation is entitled to take over the management or possession or both of the defaulting industrial concern. After sale of the asset, there was an obligation on the part of the Corporation to transfer the same in favour of the purchaser. It is for transferring of the sold asset, the agreement was entered into. By entering into an agreement, the Corporation has not exonerated the statutory liability if any, of the purchaser. The labour claims, that too in the absence of even an award, do not partake the character of a statutory liability. The Corporation or the purchaser as the case may be, is liable to discharge the statutory liabilities or the statutory dues can be held liable to be recoverable from the asset, which was taken over by the Corporation or in the hands of the purchaser and not otherwise.

8.3. In the case of Isha Marbles Vs. Bihar State Electricity Board and Another, , considering the issue, whether, the auction purchaser is liable to meet the

liability of old consumer of electricity to the premises which was purchased by him in the auction sale from Bihar State Financial Corporation u/s 29(1) of the Act, it was held that, it is impossible to impose on the purchasers the liability which was not incurred by them.

8.4. In the case of Ahmedabad Electricity Co. Ltd. Vs. Gujarat Inns. Pvt. Ltd. and Others, , considering the question whether the respondent should be liable to pay the arrears which was outstanding from the previous owners, it was held that, in the light of the law laid down in Isha Marbels (supra), the same is not permissible.

9. In view of the above, the contentions raised by learned Sr. Counsel are untenable and the Corporation having had the option of either taking over the Management or possession or both of the defaulting Industrial concern, had taken over only the possession, later sold it and consequently transferred to the Purchaser. Hence, it cannot be held that there was some mistake or error in the judgment in exonerating the Corporation from liability to satisfy the claims of the Workmen.

10. The case pleaded at paras 19 to 22 of the petition, to grant alternate prayer that, the Corporation is holding a sum of Rs. 14.13 lakhs in excess of the amount than can be appropriated by it and other secured creditors and it should be directed to make the payment of the said sum is concerned, undisputedly, such a case was not pleaded by the petitioner either before the Industrial Tribunal or in the writ petition much less in the writ appeal. Since, neither a plea was made nor urged for consideration, such a plea having been made for the first time in the Review Petition, cannot be the subject matter of consideration. On the basis of entirely new facts and grounds pleaded in the Review Petition, a review of the judgment rendered on the basis of the record of the case, is impermissible and cannot be entertained.

11. In the circumstances, the Review Petition is devoid of merit and hence we pass the following:

ORDER

(i) Review Petition is dismissed.

(ii) We make it clear that, the dismissal of the Review Petition, will not come in the way of petitioner seeking appropriate relief if any, before the appropriate forum, if permissible under law, in respect of the claim that, the 1st respondent Corporation is holding a sum of Rs. 14.13 lakhs in excess of the amount than can be appropriated by it and other secured creditors and in the circumstances, the said amount should be paid to the respondent union i.e., labour claims.

In the circumstances of the case, we direct that, there shall be no order as to costs.