

(2023) 03 DEL CK 0097

In the Delhi High Court

Case No : Review Petition No. 343 Of 2022, Civil Miscellaneous Application No. 54672, 54673 Of 2022 In Civil Writ Petition No. 9503 Of 2017

Krishana Vihar (West) Welfare Association & Anr APPELLANT

Vs

Commissioner, South Delhi Municipal Corporation RESPONDENT

Date of Decision : 15-03-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 47 Rule 1

Code Of Criminal Procedure, 1973 — Section 340

Citation : (2023) 03 DEL CK 0097

Hon'ble Judges : Satish Chandra Sharma, CJ; Subramonium Prasad, J

Bench : Division Bench

Advocate : Ravinder Yadav, Mayank Ahuja, Mukesh Gupta

Final Decision : Dismissed

Judgement

C. Hari Shankar, J

REVIEW PET. 343/2022

1. The meandering course that the various proceedings filed by Ravinder Yadav, as Petitioner 1 in the present writ petition and the review petitioner in this Review Petition, has taken, deserves to be noted at the outset, before we proceed to deal with the present Review Petition itself.

2. WP (C) 9503/2017 and our judgment dated 1st November 2017

2.1 Petitioner 1 Ravinder Yadav (who has moved the present Review Petition) and Petitioner 2 claim to the President and Member of the Krishna Vihar (West) Welfare Association. They jointly moved WP (C) 9503/2017, purportedly in public interest, seeking directions to the erstwhile South Delhi Municipal Corporation (SDMC) to improve sanitation conditions and repair roads in their colony, and also for conducting an enquiry regarding marking of fraudulent attendance by sanitation workers.

2.2 Though the petition was, *stricto sensu*, not maintainable as a public interest litigation, the petitioners being personally interested in the reliefs sought, we did not deem it appropriate to reject the petition on that ground, as the petitioners were represented by Petitioner 1 in person. We, therefore, disposed of the writ petition by our judgment dated 1st November 2017, in which certain directions were issued, *inter alia* in para 7 of our judgment, requiring the SDMC to look into the grievance of the petitioners regarding poor sanitation conditions and address it at the earliest.

3. CM 1576/2021

The SDMC moved CM 1576/2021, seeking modification of our judgment. The application sought to aver that sanitation in the colony of the petitioners was the responsibility, not of the SDMC, but of the Irrigation and Flood Control Department, Government of NCT of Delhi and/or the Delhi State Industrial and Infrastructure Development Corporation (DSIIDC). The SDMC, therefore prayed that the directions in para 7 of our judgment be issued to the said authorities instead of the SDMC, and sought modification of our judgment accordingly.

4. Cont Cas (C) 426/2018 and CM 24536/2021

4.1 In the interregnum, Petitioner 1 moved Cont Cas (C) 426/2018, from which the present Review Petition has germinated, and to which we shall presently advert. The contempt petition alleged wilful and contumacious disobedience of our judgment dated 1st November 2017 by the SDMC, which had failed to implement the directions issued therein. CM 17191/2020 was also moved by Petitioner 1 in Cont Cas (C) 426/2018.

4.2 Pursuant to directions issued by the Bench which was seized of Cont. Cas (C) 426/2018, the SDMC filed a reply to CM 17191/2020.

4.3 Petitioner 1, thereafter, filed CM 24536/2021 under Section 340 of the Code of Criminal Procedure, 1973 (Cr PC), alleging that the SDMC had made false statements in its reply to CM 17191/2020 in Cont Cas (C) 426/2018 and seeking action against the allegedly guilty officers accordingly. For reasons best known to him, however, the petitioner chose to file CM 24536/2021, not in Cont Cas (C) 426/2018, but in the present writ petition.

5. Our order dated 22nd September 2021

5.1 Our order dated 22nd September 2021 disposed of, *inter alia*, CM 1576/2021 filed by the SDMC seeking modification of para 7 of our judgment dated 1st November 2017 and CM 24536/2021 filed by Petitioner 1 seeking action against the SDMC officials for having allegedly resorted to falsehood in their reply filed in response to CM 17191/2020 in Cont Cas (C) 426/2018.

5.2 We allowed CM 1576/2021 filed by the SDMC, modifying para 7 of our judgment dated 1st November 2017 to read thus:

“So far as the second prayer of the writ petition regarding the road repair work is

concerned, the Irrigation and Flood Control Department of Government of NCT of Delhi and/or Delhi State Industrial and Infrastructure Development Corporation or any other agency shall look into the grievance of the petitioners to ensure that the same is addressed at the earliest. We make it explicitly clear that the petitioners are concerned with the completion of the work. This petitioner has nothing to do with the Government agency/institution/Department or contractor appointed by them is completing the work. Suffice it is to say that the work of construction of road repair at the areas covered under the lay out plan, which is Annexure R-3, should be completed at the earliest either by Irrigation and Flood Control Department of Government of NCT of Delhi and/or by the DSIIDC or by any other agency/contractor/institution in accordance with law, rules, regulations and Government policies applicable to the facts of the case at the earliest.”

5.3 CM 24536/2021 was disposed of, by us, vide a separate order passed on the same day, observing that, as the alleged misstatements had been made by the respondents in the reply to CM 17191/2020 which was filed in Cont Cas (C) 426/2018, the application under Section 340 of the Cr PC would also, appropriately, have to be filed in Cont Cas (C) 426/2018. We, therefore, reserved liberty to the petitioner to file such an application in Cont Cas (C) 426/2018 and directed that such application, as and when filed, would be disposed of in accordance with law.

6. CrI M 7164/2021 in Cont Cas (C) 426/2018, Cont App (C) 12/2022 and Review Petition 239/2022

6.1 On the basis of the said liberty granted by us, the petitioner filed CrI M 7164/2021 in Cont Cas (C) 426/2018, seeking invocation of Section 340 Cr PC against the SDMC for having allegedly perjured itself in its reply to CM 17191/2020.

6.2 By order dated 27th April 2022, a learned Single Judge of this Court disposed of Cont Cas (C) 426/2018, holding that, in view of the modification of the directions originally issued by us in our judgment dated 1st November 2017 by order dated 22nd September 2021, the contempt petition did not survive for consideration.

6.3 Aggrieved at the disposal, by the learned Single Judge, of Cont Cas (C) 426/2018 without passing any separate orders in CrI M 7164/2021 preferred therein, Petitioner 1 moved the Division Bench of this Court by way of Cont. App (C) 12/2022. The Division Bench of this Court, however, dismissed the appeal by order dated 18th May 2022, concurring with the judgment dated 27th April 2022 of the learned Single Judge.

6.4 The petitioner, thereafter, moved Review Petition 239/2022, seeking review of the order dated 18th May 2022 of the Division Bench, which was also dismissed on 27th October 2022.

6.5 The petitioner has not chosen to carry the matter further by way of appeal or

in any other maintainable judicial proceeding.

7. The present Review Petition

7.1 The petitioner has now, by the present application, sought to revive CM 24536/2021, originally filed in the present writ petition and disposed of, by us, by our order dated 22nd September 2021, giving liberty to the petitioner to file the said application in Cont Cas (C) 426/2018. The petitioners grievance is that, though he did so, the application was not decided by the learned Single Judge, and the appeal preferred by the petitioner before the Division Bench, specifically raising this point, was also dismissed.

7.2 We have heard Mr. Ravinder Yadav who appears in person, albeit virtually.

7.3 Mr. Yadav, we are constrained to observe is, for reasons which may best be termed as recondite, flogging a horse much after it has breathed its last.

7.4 CM 24536/2021 - which this Review Petition seeks to resuscitate - was obviously wrongly filed in the present writ petition, as the allegation in CM 24536/2021 was of perjury having been committed by SDMC, in the reply filed by it in CM 17191/2020 in Cont Cas (C) 426/2018. The application had, therefore, necessarily to be filed in Cont Cas (C) 426/2018. We, in our order dated 22nd September 2021, therefore, reserved liberty to the petitioner to move an appropriate application in Cont Cas (C) 426/2018.

7.5 Mr. Yadav prays that the said order be reviewed.

7.6 We are not, on introspection, able to find any error, apparent on the face of the record in the said direction issued by us. Mr. Yadav has, availing the liberty granted by us, did file Crl M 7164/2021 in Cont Cas (C) 426/2018. He has failed, however, to secure any favourable orders in the said application either in Cont Cas (C) 426/2018 or, thereafter, in Cont App (C) 12/2022 even though the Division Bench, in its judgment dated 18th May 2022, specifically noted Mr. Yadav's grievance that the learned Single Judge had not decided Crl M 7164/2021.

7.7 In so deciding, the learned Single Judge, in his order dated 27th April 2022 in Cont Cas (C) 426/2018, and the Division Bench, in its order dated 18th May 2022 in Cont App (C) 12/2022, were persuaded by the fact that the directions, originally issued to the SDMC, were themselves effectively withdrawn by us in our judgment dated 22nd September 2021 which, instead, issued directions to the Irrigation and Flood Control Department, Government of NCT of Delhi and the DSIIDC to do the needful.

7.8 Accepting, and acting upon, the liberty granted by us vide our judgment dated 22nd September 2021, Mr. Yadav did approach the learned Single Judge who was seized with Cont Cas (C) 426/2018 and, thereafter, the Division Bench in appeal thereagainst. Having failed to obtain relief, as he desires, in the said proceedings, Mr. Yadav, by the present Review Petition, seeks to retrace his steps

and revive CM 24536/2021.

7.9 Having accepted, and acted upon, our order dated 22nd September 2021 in CM 24536/2021, Mr. Yadav is obviously estopped from seeking a review of the said order, merely because his attempts have been unsuccessful. We considered Mr. Yadav's prayer for proceeding against the SDMC under Section 340 of the Cr PC, as advanced in CM 24536/2021, and held that the prayer had to be made, not before us in the present writ proceedings, but before the Court which was seized of Cont Cas (C) 426/2018. Mr. Yadav accepted the order, and approached the learned Single Judge who was seized of Cont Cas (C) 426/2018. He is aggrieved by the fact that he has not obtained the relief that he desires, either from the learned Single Judge or from the Division Bench in appeal.

7.10 Despite the fact that, in our judgment dated 22nd September 2021, we effectively withdrew the directions issued to the SDMC, Mr. Yadav seems determined to proceed against the SDMC (now the MCD) officials, any which way. We cannot help him.

7.11 Review, of an order passed in a writ petition, it is trite, has to abide by the discipline of Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (CPC). The grounds on which an order can be reviewed under Order XLVII Rule 1 are spelt out in the provision. Review is permissible only where (i) there is new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the review applicant or could not be produced by him at the time when the decree was passed or order made, or (ii) there is a mistake or error apparent on the face of the record, or (iii) there is some other, sufficient reason. In this context, it has been held in *Chhajju Ram v. Neki* AIR 1922 PC 112, *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* AIR 1954 SC 526, *U.O.I. v. Sandur Manganese & Iron Ores Ltd* (2013) 8 SCC 337 and *Kantaru Rajeevaru v. Indian Young Lawyers Association* (2020) 2 SCC 1 that the words, "any other sufficient reason" have to be read analogously with the preceding expressions in Order XLVII Rule 1.

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 or 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 of the Court which passed the decree or

made the order.

7.12 Viewed thus, it is clear that the present Review Petition is thoroughly misconceived. It is bereft of any averment which could justify invocation of our review jurisdiction. No error, apparent on the face of the record in our judgment dated 22nd September 2021, is pointed out. The petition does not contain any averment that, owing to material which has come to the knowledge of the petitioner after we passed our order on 22nd September 2021, review of the order is justified. No ground, analogous to these, finds place in the Review Petition, either.

7.13 In fact, Ground a) in the Review Petition reveals that the grievance of the petitioner is essentially against the orders passed in Cont Cas (C) 426/2018 and, thereafter, by the Division Bench in Cont App (C) 12/2022. They read thus:

"a) Because on 22.09.2021 Hon'ble Chief Justice bench gave liberty to file application u/s 340 Cr. PC against SDMC in Cons Cas (C) 426/2018 but on 27.04.2022 single Judge disposed off the contempt petition without deciding CrI M 7164/2021, which was irrational and against the principle of natural justice. Single Judge did not decide the CM 17191/2020 and CrI M 7164/2021 applications filed by petitioner in Cons. Cas (C) 426/2018 but decided the contempt petition in favour of the respondents without considering the rejoinders dated 10.09.2020 and 14.09.2020 filed by the petitioner and Cons App (C) 12/2022 and review petition No.-239/2022 were also dismissed on 18.05.2022 and 27.10.2022 respectively."

(Emphasis supplied)

7.14 Needless to say, this Bench cannot sit in appeal, in the present Review Petition, over the orders passed in the contempt proceedings which Mr. Yadav chose, unsuccessfully, to initiate against the SDMC. We also fail to understand how, when Mr. Yadav has failed in obtaining relief against the SDMC officials under Section 340 of the Cr PC in the proceedings taken by him, for the said purpose, by way of CrI M 7164/2021, he can now seek that relief from this Court. Were we to accede to Mr. Yadav's request, we would be taking a view contrary to that taken by a coordinate Division Bench in Cont App (C) 12/2022 and Review Petition 239/2022. That is obviously not permissible.

7.15 Ergo, no such factor, as would justify review, by us, of our order dated 22nd September 2021, can be said to exist.

8. As the petitioner has been litigating in person, we refrain from making any further comments.

9. The review petition is accordingly dismissed.

10. Miscellaneous applications, if any, do not survive for consideration and are accordingly disposed of.