
(2023) 03 DEL CK 0056

In the Delhi High Court

Case No : Review Petition No. 174 Of 2022, Civil Miscellaneous Application No. 31314, 31315, 31316, 31317 Of 2022 In Regular First Appeal No. 486 Of 2018

Kuldeep Singh Hooda

APPELLANT

Vs

Narender Mehlawat & Others.

RESPONDENT

Date of Decision : 07-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 141
Code Of Civil Procedure, 1908 — Order 37 Rule 1

Citation : (2023) 03 DEL CK 0056

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Vivek Kohli, Mritunjay Kr. Singh, Juvas Rawal, Yeshi Rinchhen, Saikat Khatua, Yeeshu Jain, Jyoti Tyagi, Manisha

Final Decision : Dismissed

Judgement

C. Hari Shankar, J

REVIEW PET. 174/2022

1. This petition seeks review of the following order passed by a Coordinate Bench of this Court on 7th February 2019:

"After arguments, this appeal is disposed of as not pressed."

2. Mr. Vivek Kohli, learned Senior Counsel appearing for the appellant-review petitioner has relied on the judgments of the Supreme Court in *Abhimanyoo Ram v. State of U.P.* (2008) 17 SCC 73 and *U.O.I. v. Mohan Rocky Springwater Breweries Ltd.* (2011) 15 SCC 229 to press his review petition.

3. On the face of it, no case for review can be said to be made out.

4. The only ground that has been urged in the present review petition, and as urged by Mr. Vivek Kohli, is that the learned Counsel for the appellant had no

instructions not to press the appeal. He submits that, as the order under review has been passed in a Regular First Appeal, the appellant should not be deprived his right to canvass the appeal on merits.

5. I regret my inability to agree.

6. It is important to note that the impugned order is not a simplicitor order dismissing the appeal as not pressed. It reads "after arguments, this appeal is disposed of as not pressed". It is obvious, at a plain reading, that learned Counsel had attempted to argue the matter and, on finding that the Court was not in sync, chose, instead of inviting an adverse order, not to press the appeal.

7. If such an order is to be permitted to be reopened by way of a review petition, it will give rise to the pernicious potentiality of forum shopping, as a party could, after finding it impossible to convince one Court, withdraw the matter and reopen the entire issue by filing a review petition before another Bench. Needless to say, any order which can result in such a possibility cannot be passed by a Court.

8. There is yet another reason why the impugned order cannot be upset in review. Even if it were to be presumed that the order was a simplicitor order of withdrawal, I am extremely doubtful as to whether, in a review petition, such an order could be reversed. Else, the situation that would arise is that a statement made by a Counsel, seeking to withdraw an appeal or a petition or any other proceeding as not pressed, would lose all sanctity, and can never be accepted by a Court. Even if such a statement is accepted, and the proceeding is disposed of as not pressed, the order would become reviewable, merely on the litigant stating that he never instructed the Counsel to make such a statement.

9. The present application having been filed in a First Appeal under the Code of Civil Procedure, 1908 (CPC), a review would lie only within the parameters of Order XLVII Rule 1 of the 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 Poulse 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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.

10. Viewed thus, it cannot be said that a case for review of the order dated 7th February 2019 is made out.

11. The decisions on which Mr. Kohli relies are, in my considered opinion, clearly distinguishable. *Abhimanyoo Ram*¹ was a case in which the Court was concerned at the practice of litigants to obtain interlocutory orders in their favour and, thereafter, withdraw the petition or appeal so as to continue the interim order. The Supreme Court expressed concern at the fact that, in such cases, where the Court blindly permitted withdrawal of the appeal or proceeding without being mindful of the fact that an interim order in favour of the review applicant already stood passed, perpetuation of the interim order, without the order attaining finality, would indirectly be achieved. It is for this reason that, in paras 6 and 7 of the report, the Supreme Court holds thus:

"6. Any attempt by a litigant to retain the benefit of the interim order by avoiding final adjudication, requires to be deprecated. In fact, it requires to be dealt with sternly. Courts should bestow caution while dismissing cases where interim relief had been granted, as not pressed or as withdrawn. The courts cannot proceed on the assumption that all concerned would know about the legal consequences of dismissal and therefore, it is not necessary to make any order in regard to the interim relief already granted. Even though the legal effect of dismissal on withdrawal, is vacation of the interim order, the respondents concerned not being aware of the legal consequences, will not take consequential action but continue the benefit extended to the petitioner by the interim order, unless there is a specific direction spelling out the consequences. Sometimes, the departmental officials concerned, on account of collusion with the petitioners who had obtained

the interim relief, will not withdraw or reverse the benefit granted to the petitioner in pursuance of the interim order, when the petition is withdrawn or dismissed as not pressed. Therefore, appropriate consequential directions cancelling or vacating the interim order should be passed so as to restore status quo ante. In cases where the prayer for dismissal (as not pressed or withdrawn) is made even before the respondent is served, then the order vacating the interim order should be communicated to the authority against whom the interim order was issued, so that any benefit extended as a consequence of the interim order, can be withdrawn or reversed. The only exception is where the respondents agree for the continuance of the interim order as a final relief, or agree that the benefit of the interim order already granted need not be disturbed, in which event, the court should record such submission and pass appropriate consequential orders.

7. In this case, the High Court has taken care to issue appropriate consequential directions by vacating the interim order. The directions are not unwarranted additions. In the usual course such an order would not have called for interference. But there is need to interfere with the order. Fairness to the litigant requires that the court, when a request for dismissal is made, should inform or indicate to the petitioner or his counsel that as a consequence of such dismissal, the benefit of the interim relief already granted will be revoked or withdrawn. It is possible that a litigant may make a prayer for withdrawal without any ulterior design or motive, and that he would not have sought dismissal of the petition at all, if he had known that the benefit of the interim order will be withdrawn as a consequence of the dismissal. The Court cannot assume, that in every case where a request for withdrawal is made, the request is a dishonest attempt to avoid adjudication after securing the benefit of an interim order. If the court fails to inform the petitioner about the consequential directions proposed while dismissing the petition as not pressed, before making the order, there is every likelihood of the petitioner being denied the choice of proceeding with the case. In law, no doubt, a party withdrawing or not pressing a petition, is presumed to know the legal consequences thereof. His counsel is also expected to advise him. But it does not follow that the court need not inform the petitioner about the consequential directions which it proposes to issue, when dismissing a case on his request."

12. Mohan Rocky Springwater Breweries Ltd.² is, in fact, not even a precedent on the issue of law that Mr. Kohli seeks to urge within the meaning of Article 141 of the Constitution of India, as all that the Supreme Court has done in the said case is to, in view of the submission made before it that a consent had been granted by a Counsel without permission of the party, allow the party to file a review petition. The issue of whether, in such a case, a case for review would be made out or not has not been examined by the Supreme Court at all.

13. For the aforesaid reasons, I am of the opinion that no case for review of the order dated 7th February 2019 is made out.

14. The review petition is accordingly dismissed.

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