

(1997) 03 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Review Petition No. 16 of 1997 and 20 of 1989

L.Rs. of Chand Mal

APPELLANT

Vs

L.Rs. of Dhanna Lal

RESPONDENT

Date of Decision : 17-03-1997

Acts Referred:

Constitution of India, 1950 — Article 134A

Citation : (1998) 1 CivCC 112 : (1997) 2 RLW 805 : (1997) 2 WLC 689 : (1997) 1 WLN 390

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Judgement

R.R. Yadav, J.—Instant Review Petition has been filed for recalling and reviewing my order dated 29.1.97 passed in S.B. Civil Second Appeal No. 20 of 1989 dismissing the appeal summarily as it was found to be concluded by concurrent finding of facts recorded by both the courts-below and no substantial question of law was involved.

2. The aforesaid second appeal was filed on behalf of the appellants by their counsel Mr. L.R. Mehta and Mr. Rajendra Mehta. The said appeal was argued by Mr. Rajendra Mehta, learned Counsel for the appellant and after hearing him, the appeal was dismissed summarily as stated above.

3. Now, the appellant-petitioners have decided to change their counsel and instead of Mr. L.R. Mehta and Mr. Rajendra Mehta, they preferred to file the present review petition by engaging Mr. H.C. Jain and Mr. S.C. Maloo as their counsel.

4. It is urged by Mr. H.C. Jain, learned Counsel for the appellant-petitioners that while I was dismissing the second appeal on the aforesaid ground that my own decision rendered in case of Chetan Dass v. Anushuiya reported in 1996(1) WLC 245 was not brought to my notice by their counsel engaged by the appellant-petitioners.

5. I am of the view that the provisions relating to power of review envisaged under Order 47 Rule 1 CPC constitute an exception to the general rule to the effect that once a judgment is signed and pronounced, it cannot afterwards be altered. Thus, power to review is exercisable only where the circumstances are distinctly covered by the statutory exceptions contemplated under Order 47 Rule 1 CPC.

6. A close scrutiny of the provisions envisaged under Order 47 Rule 1, CPC revealed that any person considering himself aggrieved is entitled to move an application for review of a decree or; order from which a statutory appeal is allowed but from which no appeal has been preferred; by a decree or order from which no appeal is allowed or by a decision on a reference from a Court of Small Causes and who from discovery of a new and important matter or evidence which after 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 record or for any other sufficient reason desires to obtain a review of the decree passed or order made against him.

7. Indisputably, the aforesaid argument raised by the learned Counsel for the appellant-petitioners Mr. H.C. Jain does not fall within the scope of the grounds enumerated under Order 47 Rule 1, CPC. It is urged by Mr. Jain that his aforesaid argument is squarely covered within the expression after exercise of due diligence was not within the knowledge of the appellant-petitioners when the appeal was dismissed summarily on 29.1.1997.

8. The aforesaid argument of the learned Counsel for the appellant-petitioners is attractive but fallacious. Once the appellant-petitioners engaged counsel on their choice on their behalf to do "Pairvi" in the second appeal, the learned Counsel so engaged by them step into their shoes and arguments advanced by them shall be treated to be argument advanced by the appellant-petitioners themselves by extending the principle of legal fiction. To my mind, not to bring to the notice of the Court the decision rendered in case of Chetan Dass (supra) while dismissing the second appeal summarily does not fall within the exception as argued by the learned Counsel for the appellant-petitioners in the present case for altering the decision taken on 29.1.97.

9. In my considered opinion, the expression "new and important matter" used under Order 47 Rule 1 CPC should be interpreted about discovery of some evidence having clinching bearing on the merit of the case in hand and not a, decision having affect of precedent in existence on the date of delivery of judgment but not brought to the notice of the court. I am also of the view that if interpretation of the aforesaid expression is taken as suggested by the learned Counsel appearing on behalf of the appellant petitioners Mr. Jain then it would lead to grotesque result opening a flood gate of litigation by engaging another counsel or better counsel. Such interpretation as suggested by Mr. Jain would further prove to be counter productive to the concept of even handed, fair and

impartial dispensation of Justice between man and man and State and its citizen. Thus, the appellant-petitioners in the present case, are not entitled to pray for review on the ground of discovery of a decision rendered by me in case of Chetan Dass (supra) by engaging other counsel assuming for argument sake that in the light of the decision rendered by me in case of Chetan Dass (supra), the dismissal of appeal on 29.1.97 is found to be not correct.

10. In abundant caution, it is held that the facts and circumstances of the decision rendered by me in case of Chetan Dass (supra) is not applicable in the facts and circumstances of the present case. It is apparent from perusal of the decision rendered in case of Chetan Dass (supra), that the question decided in that case was raised in the courts-below as well as in the memo of appeal but in the present case, neither such question was raised before the courts-below nor it was argued or taken in the memo of second appeal, hence, I am not inclined to allow the learned Counsel for the appellant-petitioners to raise such question for the first time at the stage of review under Order 47 R.I CPC without laying factual foundation before the courts-below.

11. It is next contended by the learned Counsel for the appellant-petitioners Mr. H.C. Jain that the aforesaid ground may be treated to be within the expression "any other sufficient reason" used under Order 47 Rule 1, CPC. I am not impressed with the aforesaid argument of the learned Counsel for the appellant-petitioners as according to me the aforesaid words must be taken to be analogous to those grounds enumerated under Order 47 R.I CPC previously before the said expression is used. In my humble opinion, engaging another counsel or better counsel in the review petition is not permissible to be interpreted as a ground analogous to those grounds specified immediately preceding the expression "any other sufficient reason".

12. It is to be imbibed that in a second appeal question of law is no ground for interference unless the question of law argued attains the character of substantial question of law. Grounds taken in the present review petition cannot be held to be substantial question of law having bearing on the merit of the case. New grounds taken in the review petition were never taken in the courts-below nor taken in the memo of second appeal nor argued on the date of dismissal of second appeal, therefore, these new grounds cannot be allowed to be taken in the review petition for the first time to cause prejudice to the opposite parties.

13. In view of what have been discussed above, the instant review petition is dismissed.

14. Learned Counsel for the appellant-petitioners made as oral prayer under Article 134A of the Constitution of India to grant leave to appeal to the Supreme Court. I am of the view that in the present review petition, no; substantial question of law of general importance is involved, therefore. oral request for permission to leave to appeal is hereby refused.

15. Learned Counsel for the petitioner strenuously urged before me that the

appellant-petitioners propose to file SLP before Hon''ble the Supreme Court, therefore, he prayed that the decree under appeal may not be executed for further two months.

16. Looking into the facts and circumstances of the present case, I hereby direct that two months'' period envisaged under Sub-section (9) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 for execution of decree of ejectment against the appellant-petitioners is to be computed from the date of rejection of the present review petition and not from the date of dismissal of the second appeal on 29.1.97. It is made clear that extension of two months'' period in the present review petition after dismissal of the second appeal on 29.1.97 will not be cited as precedent in future in other cases as review petitions are never treated to be continuation of suit or appeal.