

(2008) 03 GUJ CK 0080

In the Gujarat High Court

Case No : Spl. Civil Application No. 7535 of 1997

Narandas Chimanlal Patel (since deceased by L.Rs.) and
Others

APPELLANT

Vs

Swami Gunatitnagar Co-op. Housing Society Ltd.

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114, 151
Gujarat Co-operative Societies Act, 1961 — Section 151, 96

Citation : AIR 2008 Guj 135

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Tushar Mehta, for the Appellant; Mihir H. Joshi, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—The short facts of the case appear to be that the petitioners are the member of the respondent Societies residing in tenement No. 47. The Society passed a Resolution dated 26-12-1993 for expulsion of the petitioners as members on the grounds mentioned in the Resolution. On 10-1-1994, the petitioner filed Lavad Suit for declaration and perpetual injunction praying that the proceedings of the meeting dated 26-12-1993 are illegal, mala fide, void etc. and the permanent injunction was also prayed restraining the Society or its agents or servants from implementing the proceedings of the meeting dated 26-12-1993. The learned Nominee entertained the suit and passed order on 15-2-1994 below application for temporary injunction, whereby the interim injunction came to be granted restraining the Society, its members, and agents from implementing the proceedings of the meeting dated 26-12-1993. It appears that the respondent Society carried the matter in revision being Revision Application No. 106/94 before the Gujarat Co-operative Tribunal. The learned Tribunal after hearing both the sides, passed the judgment on 28-6-1995, whereby the revision was dismissed and principally accepted the contention that as on the date when the suit was filed, nor proposal was pending before the

District Registrar, the Nominee had the jurisdiction. It appears that thereafter, the Society filed Review Application No. 20/95 against* the said judgment of the Tribunal and the Tribunal thereafter, heard the review application and vide another judgment dated 15-9-1997, allowed the revision and set aside the order passed by the Nominee and also recalled and reviewed the earlier judgment of the another Bench of the Tribunal. It is under these circumstances, the petitioners have approached to this Court by preferring the present petition.

2. Heard Mr. K. D. Shah for Mr. Mehta for the petitioner and Ms. Thakore for Mr. Joshi for the respondents.

3. As such, the facts are not in dispute and the principal aspect deserves for consideration is the exercise of the power by another Bench of the Tribunal in review. It is the contention of the petitioner that the Tribunal cannot exercise the power of review as if to sit in appeal over the judgment of the Tribunal delivered earlier. Whereas, it is the contention of the respondent that if there is error apparent on the face of the record for not properly considering the binding decisions of this Court, such can be corrected in review and the Tribunal was well within the power to review the judgment and has rightly allowed the revision application by setting aside the order of the learned Nominee in the Suit proceedings.

4. The examination of the aforesaid contention mainly arises for considering the scope and ambit of the review powers of the Tribunal. Section 151 of the Gujarat Cooperative Societies Act (hereinafter "the Act" for short) reads as under:

Review of orders of Tribunal:

1. The Tribunal may, either on the application of the Registrar, or on the application of any party interested, review its own order in any case, and pass in reference thereto such order as it thinks just:

Provided that, no such application made by the party interested shall be entertained, unless the Tribunal is satisfied that there has been discovery of new and important matter of evidence, which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when its order was made, or that there has been some mistake or error apparent on the face of the record, or for any other sufficient reasons:

Provided further that, no such order shall be varied or revised, unless notice has been given to the parties interested to appear and be heard in support of such order,

2. An application for review under Sub-section (1) by any party, shall be made within ninety days from the date of the communication of the order of the Tribunal

The aforesaid provision as such can be said as akin to the provisions of Section 114 of the CPC read with the provisions of Order XLVII, Rule 1 of the Civil

Procedure Code. Rule 1 of Order XLVII reads as under:

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 the 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) 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.

5. Therefore, if the language of the aforesaid Section 151 of the Act is considered, the Tribunal can exercise the power of review only if:

1) There is discovery of new and important matter of evidence which after exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made.

2) Or that there has been some mistake or error apparent on the face of record.

3) Or for any other sufficient reasons.

As regards the provisions of Order XLVII, Rule 1 of the CPC is concerned, the language provides for review, if the conditions are:

1) Discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order was made.

2) Or on account of some mistake or apparent error on the face of record.

3) For any sufficient reasons.

Therefore, in view of the similar language for satisfaction of condition for exercise of the powers for review u/s 151 of the Act and of Order XLVII, Rule 1 of the Civil Procedure Code, the principles which are settled for exercise of the power by the Court for review under Order XLVII, Rule 1 can be made applicable

for the exercise of the power by the Tribunal u/s 151 of the Act.

6. The position of law for scope and ambit of the power of review u/s 114 of the CPC read with Order XLVII, Rule 1 of the CPC is by now settled. Reference to two decisions may be sufficient; one being the decision of this Court in the case of Dolat Industries Vs. Krishna Oil Industries and Another, wherein after decision of this Court in Appeal from Order No. 436/00, the review application was filed before this Court. At that stage, this Court had an occasion to deal with the scope and ambit of the powers of review u/s 114 read with Order XLVII, Rule 1 of the Civil Procedure Code. In the said decision, after taking into consideration the earlier decision of the Apex Court in the case of Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, and the another decision of the Apex Court in the case of Ajit Kumar Rath Vs. State of Orissa and Others, , it was inter alia observed at para 11 as under:

The review sought for is not permissible within the ambit and scope of Section 114 or Order 47 of the Civil Procedure Code, simply because something what is decided on merits sought to be decided again. Secondly, if we peruse the judgment for which this review application is preferred in clear terms it is established that there was no prima facie case in favour of the plaintiff to grant any interim relief. At that stage the evidence on record was taken into consideration. If any error is committed, the judgment or observation may be subject to appeal before the higher forum, but not subject to the review jurisdiction.

7. In the case of Haridas Das Vs. Smt. Usha Rani Banik and Others, the Apex Court did consider the scope and ambit of the review powers u/s 114 read with Order XLVII of the CPC and it was inter alia observed at para 13 as under:

In order to appreciate the scope of a review, Section 114 of the C. P. C. has to be read, but this section does not even adumbrate the ambit of interference expected of the Court since it merely states that it "may make such order thereon as it thinks fit." The parameters are prescribed in Order XLVII of the C. P. C. and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. This is amply evident from the explanation in Rule 1 of the Order XLVII which states that 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. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the Court should exercise the power to review its order

with the greatest circumspection.

8. If the aforesaid principles are applied and the facts of the present case are considered, it appears that in the earlier judgment of the Tribunal dated 28-6-1995, after considering the decision of this Court reported at (1978) 19 GLR 92, it was inter alia concluded as under:

The jurisdiction of the learned Nominee ends and the jurisdiction of the Registrar commences as soon as the resolution is submitted to the Registrar for approval. Therefore, in view of the decision of this Tribunal in Revision 75/88, the learned Nominee in the present case also has the jurisdiction since the resolution is submitted to the Dist. Registrar on 12-1-94 and both thereto present suit is filed on 10-1-94. Therefore, the learned Nominee has rightly, relying upon the decision of this Tribunal in Revision No. 75/88, decided the question of jurisdiction while dealing with Exh. 6 in his order dated 15-2-94.

Based on the aforesaid conclusion, the Tribunal dismissed the revision.

9. The subsequent Bench of the Tribunal while exercising the review power, inter alia observed at para 13 as under:

In the present case, we feel that there is some genuineness in the grievance that has been made by the present applicant before us.

10. After recording the said findings, the Tribunal once again reconsidered the very decision of this Court reported at 1978 (19) GLR 92 and has taken different view that the Nominee had no jurisdiction and consequently, allowed the revision by reviewing its earlier judgment.

11. Therefore, it appears that it is a case where the power of review is exercised because of understanding or error for considering the decision of this Court. As such, the error for understanding the decision of the higher forum cannot be said as a valid ground for exercising of the power of review. If such powers are read, the very basic structure of resorting to the remedy of approaching before the higher forum and the power of the higher forum to reverse the decision of the lower authority would be frustrated. The ground on the basis of which the power is exercised by the Tribunal can at the most be termed as an error of improper consideration or misunderstanding of the precedent of this Court. If the very decision is already considered by the earlier bench and having considered the said decision, a final view is expressed, it cannot be upset or reversed merely because the understanding of the another Bench of the same Judgment is different. Therefore, I find that the exercise of the power by the Tribunal for review is beyond the scope and ambit of the power of the Tribunal for review u/s 151 of the Act.

12. The aforesaid is coupled with the circumstance that it is not a matter prevailing absolutely that the learned Nominee had no jurisdiction in view of the decision of this Court reported at 1978 (19) GLR 92 in the case of Jitendra Natverlal Thaker and Ors. v. Hirabag Co-op. Housing Society Ltd. and Ors. The

very decision is subsequently considered by this Court in the case of Arjunbhai K. Vegda Vs. Tejvir Park Co-op. Housing Society Ltd., and the view taken is that if the Society has passed the Resolution without following the mandatory procedure and there is no proper proposal forwarded to the District Registrar, then the dispute would fall within the jurisdiction of the Nominee u/s 96 of the Act.

13. Even in the present case, on the date when the Suit was filed, there was no proposal before the District Registrar and hence, it would not be a case of inherent lack of jurisdiction with the Nominee.

14. In view of the above, the impugned order passed by the Tribunal below Review Application dated 15-9-1997 cannot be sustained. The same is quashed and set aside.

15. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs.