
(2002) 04 RAJ CK 0099

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 725 of 1998

Natha Arts and Crafts Pvt. Ltd.

APPELLANT

Vs

RIICO and Another

RESPONDENT

Date of Decision : 03-04-2002

Acts Referred:

Citation : (2003) 1 RLW 60 : (2002) 3 WLC 203 : (2002) 5 WLN 49

Hon'ble Judges : Shiv Kumar Sharma, J;Khem Chand Sharma, J

Bench : Division Bench

Advocate : Raj Deepak Rastogi, for the Appellant; N.K. Joshi and A.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Sharma, J.—The order shall dispose of the preliminary objection raised by the respondent in regard to the maintainability of the instant appeal.

2. Plots No. G-105 and G-106 situated in Industrial area Sanganer Jaipur were allotted to appellants by the respondent for short (RIICO) and lease deed was executed on October 24, 1989. Incorporating various reasons in the letter dated August 19/21, 1995 the RIICO intimated its decision to the appellant to cancel the allotment, to determine the lease deed and to take over the possession of the plots. The appellants thereafter submitted various representations seeking restoration of the plots but the RIICO in its letter dated November 8, 1996 informed the appellant as under-

"Pursuant to the above decision of the management i.e. not to restore the cancelled plots the cheque against refundable amount is being enclosed herewith. As the possession was taken over on 1.11.96 you are in an unauthorised possession of the plot thereafter. Therefore you are hereby intimated to vacate the premises and remove your belonging within 15 days of this information failing which action shall be initiated...."

3. Assailing the aforequoted letters the appellant instituted writ petition. The

Single Bench of this court vide order dated March 17, 1998 dismissed the writ petition with the following observations-

"...the petitioner has now moved this court raising a plea that he could not have raised construction unless possession was delivered to him and plan was sanctioned in this regard.

There is no merit in the plea of the petitioner on either of the courts, as it has been clarified by the respondents on the basis of the documents and the lease deed that in fact major portion of the plots of the land was delivered to the petitioner even before the lease deed was executed as already stated herein before and the plan had also been sanctioned on 30.3.90. The petitioner however, did nothing and later on wanted to change the project by changing the project of marble cutting industry in order to start a handicraft industry. This was not the condition in the lease deed for which the land was handed over to the petitioner.

There is thus, no reason to interfere in this writ petitioner and hence it is dismissed."

4. The petitioner thereafter through a review petition made request to the learned Single Judge to recall the order dated March 17, 1998. Learned Single Judge vide order dated May 5, 1998 dismissed the review petition. The order reads thus-

"This review petition has been filed against the order dated 17.3.98 passed in SBCWP No. 5675/96 on the ground that an appeal of the petitioner against cancellation of the lease deed is pending before the Managing Director, RIICO, who is the appellate authority under the RIICO Disposal of Land Rules, 1979 and although no final order has been passed in the said appeal a fresh order for dispossession of the petitioner from the land in question was passed against which the petitioner has moved this court challenging the said letter dated 8.11.96 as contained in Annx. 43.

On a show cause notice being issued on the said writ petition, a reply was filed by the respondents and after hearing the counsel for the parties, the writ petition was dismissed since the lease deed having been cancelled, the respondents RIICO was fully justified in passing the order of dispossession as the petitioner had failed to carry out the terms and conditions given out in the lease deed. It is quite obvious from the order impugned that the petitioner never pointed out the fact before this court that any appeal of the petitioner was pending before any authority and now by way of review petition this fact has been urged.

If the appeal of the petitioner is pending before the competent authority of the RIICO, the petition is under the circumstances ought to have raised their plea of dispossession from the land in question before the appellate authority, but instead of doing so, they rushed to this court challenging the order by cancellation of lease deed and this court therefore formed an opinion that the

petitioner was prima facie guilty of not complying with the terms and conditions of the lease deed. However, in the interest of justice I deem it appropriate to grant liberty to the petitioner to raise all contentions before the authority including the question of dispossession of the petitioner from the land in question as this court cannot protect the petitioner from dispossession once the lease deed in his favour stands cancelled. It is further, observed that the appellate authority will consider the merits of the plea and the counter plea raised on behalf of the parties irrespective of any observation passed by this Court.

Subject to this liberty, the review petition is dismissed."

5. Although instant special appeal was filed on May 26, 1998 yet the appellant did not choose to assail the order dated May 5, 1998, the prayer made in the instant appeal by the appellant is as under-

"It is, therefore, respectfully prayed that in the interest of justice your Lordships be pleased to accept this special appeal, it is also prayed that the impugned judgment dated 17th March 1998 may kindly be quashed and set aside. Any other relief to which appellant is found to be entitled be granted."

6. Subsequent to filing of the instant appeal, the appellant on May 30, 1998, moved an application in the form of appeal pursuant to the directions given by the learned Single Judge in the order dated May 5, 1998. The RIICO considered the order dated May 5, 1998 and vide letter dated July 3, 1998 intimated the appellant that as the application dated July 4, 1996 was filed after institution of appeal by the appellant before the RIICO and intimation of its dismissal had already been intimated to the appellant vide communication dated November 8, 1996, therefore the appeal filed by the appellant on May 30, 1998 pursuant to the order dated May 5, 1998 was considered to record.

7. Instant appeal stood admitted on September 2, 1998.

8. The appellant moved an application on September 14, 1998 alongwith copies of the appeal dated May 30, 1998 and the letter of RIICO dated July 3, 1998 in the instant appeal and made a request to take subsequent events on record.

9. On July 24, 2001 another application was filed by the appellant seeking amendment in the memo of appeal.

10. A preliminary objection has been raised on behalf of the respondents in regard to the maintainability of the appeal on the ground that the order dated March 17, 1998 which is under challenge in the instant appeal stood merged in the subsequent order dated May 5, 1998 and pursuant thereto the appellant filed appeal before the RIICO, the instant appeal has become infructuous as the order dated March 17, 1998 stood merged in the subsequent order dated May 5, 1998.

11. We have heard the rival submissions, on the preliminary objection so raised and at the outset we propose to decide the preliminary objection.

12. Mr. Raj Deepak Rastogi learned counsel appearing for the appellant on the

strength of various judicial pronouncements urged that there are three stages in a review petition and if the third stage is not reached then the earlier order which is under review does not merge in the review order. In the instant case as the review petition was dismissed in limine, therefore the order of dismissal of writ petition did not merge in the order dismissing the review petition and there was no need challenge the order dated May 5, 1998. Learned counsel invited our attention to the various provisions contained in order 47 CPC. Reliance is placed on the following-

- (i) Khurshed Ali Khan Vs. Ram Saran Das and Another,
- (ii) AIR 1954 Madras 642
- (iii) Shanker Motiram Nale VS . Shilolsing Gannusing Rajput, (1994) 2 SCC 753
- (iv) AIR 1923 Calcuta 113
- (v) AIR 1938 Madras 573
- (vi) RLW 1972 Page 129
- (vii) 1986 WLN (UC) 438
- (viii) Kunhayammed and Others Vs. State of Kerala and Another,
- (ix) JT 2001 (5) SC 338

13. It is well settled that High Court has inherent power to review its order rendered under Article 226 of the Constitution of India. Even if it is assumed that the principles contained in order 47 of the CPC may not terms apply to review of judgment and order passed in writ petitions under Article 226, principle underlying the same can be invoked while considering an application for review of a judgment/order under Article 226. There is no quarrel with this proposition that there are three stages in review petition and unless the third stage is reached the earlier order which is under review, does not merge in the order passed on review application. Bearing in mind this legal proposition if we examine the order dated May 5, 1998 we find following peculiarities in it.

(i) Earlier order dated March 17, 1998 was reconsidered by the learned Single Judge and reasons were assigned as to why the learned Single Judge formed opinion while passing the order, that the appellant was prima facie found guilty of not complying with terms and conditions of the lease deed.

(ii) After reconsidering the earlier order the learned Single Judge, in the interest of justice, granted liberty to the appellants to raise all contentions before the authority of RIICO including the question of dispossession of the appellant from the land in question as the court found itself unable to protect the possession in view of cancellation of lease deed.

(iii) The learned Single Judge thereafter directed the appellate authority of RIICO to consider the merit of the pleas raised before it by the appellant and the

opposite party, irrespective of any observations made in the earlier order dated March 17, 1998.

(iv) Subject to the aforequoted liberty granted to the appellant, the review petition was ordered to be dismissed.

Looking to the nature of the order dated May 5, 1998 how can we agree with the submissions of Mr. Raj Deepak Rastogi, learned counsel that the review petition of the appellant was dismissed in limine. Contents of the said order persuade us to hold that the review petition was virtually allowed in part and earlier order dated March 17, 1998 stood merged in it. The appellant who made fresh appeal pursuant to the order dated May 5, 1998 before the appellate authority of RIICO has every right to assail the order of the appellate authority rendered in appeal, by filing a writ petition before the Single Bench of the High Court, as fresh cause of action arose after dismissal of appeal by the appellate authority and the subsequent events can only be looked into in the writ petition and not by us in the instant appeal. In our considered opinion after passing of the order dated May 5, 1998 the instant appeal filed on May 26, 1998 was not maintainable. Had the order dated May 5, 1998 been brought to our notice on September 2, 1998 the instant appeal would not have been admitted.

14. In the result the instant special appeal stands dismissed as not maintainable. No costs.