
(2006) 07 DEL CK 0141

In the Delhi High Court

Case No : C.M. No. 8513 of 2006 in Writ Petition (C) No. 3916 of 1990 and C.M. No. 9394 of 2006 in Cont.Cas. (C) 88/92

P.U.R. Polyurethane Products (P) Ltd.

APPELLANT

Vs

Geeta Bhargava and Others

RESPONDENT

Date of Decision : 25-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 151

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 5(1)

Citation : (2006) 92 DRJ 83 : (2007) 3 RCR(Civil) 416 : (2007) 1 RCR(Rent) 33

Hon'ble Judges : Mukul Mudgal, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Rakesh Munjal and Sanjay Abbot, for the Appellant; Parag Tripathi A.S. Mathur and Ajay Bhargav, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—These two applications CM No. 8513/2006 in W.P. (C) 3916/1990 CM No. 9394/2006 in Cont. Cas. (C) 88/92, have been filed seeking recall of an order dated 3.7.2006 passed by us in writ petition W.P. (C) No. 3916 of 1990 and Contempt Case No. 88/1992.

2. These applications are filed by the petitioner whose counsel on record submitted before us that on the earlier date of hearing i.e. 3.7.2006, he was in some serious personal difficulty and was unable to attend the hearing. We may mention here that on 3.7.2006 we passed over the matter once and when no one was present on behalf of the petitioner even on the second call, we proceeded to hear counsel for the respondent and passed the final order dated 3.7.2006.

3. Although these applications are designed as applications for recall of our order dated 3.7.2006, they really are petitions seeking a review of that order. Counsel for the petitioner was unable to show us any provision in the CPC or the Rules of this Court, that permits an application for "recall" to be filed. The omnibus provision of Section 151 CPC ought not to be pressed into service when there are

specific provisions in the CPC and this Court's Rules governing the filing of review petitions.

4. As far as the CPC provisions are concerned, Section 114 read with Order XLVII CPC deals with the filing of review petitions. The word "recall" is not found in these provisions. As far as the Rules of our High Court are concerned, Part A (a) of Chapter I of Volume V of the High Court Rules & Orders deals with "the presentation and reception of appeals, petitions and applications for review and revision". Para 10 of Part A (a) reads thus:

10. Application for review to contain a certificate that there are sufficient grounds--Every application for review of a judgment or order of a Division Bench, or of a Single bench of the High Court presented by an Advocate shall be signed by him, and he shall certify that the grounds contained therein are good and sufficient grounds for the review sought. No Advocate shall be heard in support of an application for review of any judgment or order unless and until he has certified in the manner above prescribed the grounds already taken or any amended grounds of application.

Nowhere in these rules is there any reference to any application for "recall". The position that emerges is that where a case has been dismissed not merely for default or non-prosecution but on merits as well, the only course available to a party, who wishes to have such order of the court reviewed, is to file an appropriate application for that purpose in accordance with the provisions set out hereinabove. It requires to be noticed that the provisions in para 10 above applies both in the case of review of a judgment or an order of either the Single Judge or the Division Bench of this Court. Every such application is required to be presented by an advocate, signed by him and such advocate shall certify that the grounds taken are good and sufficient grounds for the review sought. Further, it appears that this certification of the grounds by the advocate is a mandatory pre-condition for the review petition to be considered. The present applications do not satisfy this requirement at all. By conveniently labelling them as applications for "recall" what in effect is sought to be done is to avoid the procedure outlined hereinabove. This practice requires to be discouraged as it needlessly adds to the case load of the Court and gives a party a further chance to file petitions for review, if the attempt at having the order "recalled" fails. This by itself is sufficient to dismiss the present applications.

5. However, in the interests of justice, we were not inclined to reject these applications on that ground and felt that the petitioner must be given an opportunity to place its case before us. Accordingly, we proceed to treat these applications as review petitions and are disposing them of as such by this order.

6. When these applications were first listed for hearing on 18.7.2006, Mr. Sanjay Abbot, learned Counsel for the petitioner sought a pass over on the first occasion stating that learned senior counsel would be leading the arguments. He repeated this request even on the second call. At his instance, we kept these applications

for hearing on the following date i.e. 19.7.2006.

7. Mr. Rakesh Munjal, learned Senior Advocate appeared for the petitioner along with Mr. Sanjay Abbot, Advocate on the following date i.e. 19.7.2006. Mr. Munjal also handed over two compilations, one containing a detailed list of dates and the other containing copies of documents already on the record. Mr. Munjal, the learned senior counsel for the petitioner, sought recall/review of our order dated 3.7.2006 on the following grounds:

(i) On 28.1.1991, this Court had permitted the petitioner to amend the prayer clause in the writ petition whereby in addition to the relief already sought, the petitioner was allowed to seek a direction to the respondent to allot the shed in question.

(ii) Further the petitioner having paid to the Delhi State Industrial Development Corporation (DSIDC), Respondent No. 2 herein, a sum of Rs. 14,25,000 pursuant to the order dated 3.9.1993 of this Court, the petitioner could urge the alternative prayer for the allotment of the shed in question and therefore, the petition had not become infructuous.

(iii) There was no impediment to the DSIDC allotting the shed in the name of the petitioner since it has fulfilled all the criteria.

8. The facts of the present case have already been set out in the order dated 3.7.2006 and need not be repeated. For the purposes of the present application, it is sufficient to notice that the petitioner claims to be the tenant/licencee of respondent No. 4, the original allottee in respect of the shed in the New Okhla Industrial Complex. The Respondent No. 4 challenged an order dated 20.11.1990 of the Estate Officer directing her eviction in proceedings u/s 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Act). The petitioner thereafter filed a writ petition, W.P. (C) 3916/1990 in this Court, challenging the eviction order dated 29.11.1990. By an order dated 28.1.1991, this Court granted the petitioner permission to amend the writ and seek a direction to the DSIDC, respondent No. 2 herein, to allot and transfer the said shed in the petitioner's name.

9. Meanwhile, the appeal filed by Respondent No. 4 challenging the eviction order dated 20.11.1990 of the Estate Officer was allowed and the matter was remanded to the Estate Officer for a fresh consideration. On 20.11.1991, the Estate Officer passed a fresh order of eviction which was challenged by way of separate appeals, both by respondent No. 4 and the petitioner herein. The appeal of respondent No. 4 was dismissed in default. The appeal of petitioner herein against the said order dated 20.11.1991 of the Estate officer also stood dismissed in default by the learned Additional District Judge by an order dated 13.8.1998. This was never challenged thereafter. Thus, the eviction order dated 20.11.1991 became final as against both the petitioner and-respondent No. 4.

10. Since the above developments had taken place after the amendment was

permitted on 28.1.1991, the petitioner realised, and perhaps rightly, that if the eviction order had become final there was no question of the allotment of the shed to the petitioner thereafter. Therefore, much later in 2001, the petitioner sought to amend writ petition to further challenge the eviction order dated 20.11.1991, However, as noted in our order dated 3.7.2006, that application was dismissed as withdrawn. In the circumstances, since the eviction order dated 20.11.1991, made after the amendment to the writ petition was permitted, became final vis-?-vis the petitioner, the prayer sought for allotment of the shed was incapable of being granted and did not survive. Therefore, there is no merit in the first contention of the petitioner.

11. Mr. Munjal next contended that on account of an order dated 3.9.1993, whereby this Court permitted the petitioner to pay the DSIDC a sum of Rs. 14,25,000, the petitioner's claim to be allotted a shed still survived. We do not agree. The order dated 3.9.1993 clearly indicates that the payment would be "without prejudice to the rights and contentions of the parties." Further, the counsel for DSIDC informs that the said amount of Rs. 14,25,000 has been kept in the separate account and can be returned to the petitioner at any time the petitioner so desires. Mr. Munjal, on instructions, stated that the petitioner was not interested in the return of the said sum. Be that as it may, we are of the View that the mere fact that by an interim order, the court permitted the petitioner to pay a sum of Rs. 14,25,000 to the DSIDC cannot create any right in the petitioner to be allotted the shed in question. It is always open to the petitioner to seek return of the said sum and we have no doubt that as and when the petitioner does so, DSIDC will return it to the petitioner.

12. The third contention that notwithstanding all these developments, the petitioner should still be allotted the shed does not appeal to us. We cannot be unmindful of the fact that the eviction order as against the petitioner has become final and as such the main challenge in the writ" petition must fail. In view of the subsequent developments, the alternative relief also cannot be granted.

13. Accordingly, we find no ground to review or recall our order dated 3.7.2006. In the circumstances, these applications are dismissed.