
(2015) 09 DEL CK 0319
In the Delhi High Court
Case No : W.P.(C) 7001/2015

Rajeev Aggarwal APPELLANT

Vs

Oriental Bank of Commerce and Others RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 151, 22

Citation : (2015) 09 DEL CK 0319

Hon'ble Judges : G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : A. Maitri, Advocate, for the Appellant; S.A. Khan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—Two appeals were filed by the petitioner herein before the Debts Recovery Appellate Tribunal (hereinafter referred to as ("DRAT")). The first appeal was filed assailing the impugned order dated 31.05.1999 by which an OA filed by the bank was allowed. The second order under challenge was an order dated 28.01.2013 whereby the application seeking review of the order dated 31.05.1999 was rejected by the Debts Recovery Tribunal (DRT). The Appellate Tribunal dismissed the first appeal on the ground that the same was hopelessly barred by limitation and the Tribunal did not find sufficient grounds to condone the delay of 4929 days (almost 14 years).

2. Counsel for the petitioner has contended that after passing of the order of 31.05.1999, he was diligently pursuing his review petition which was filed on the advice received by him. He submits that the review petition could not be decided for multiple reasons and petitioner alone cannot be blamed for the delay in the decision in the review petition. As far as second appeal is concerned, he relies on the observations made by the Appellate Tribunal in the concluding para of the order that once the appeal against the order dated 31.05.1999 had been dismissed, the appellant (petitioner herein) to pursue their appeals against the

order dated 28.01.2013 is ill effected. Mr. Maitri submits that no decision has been rendered by the Appellate Tribunal on the second appeal filed by him. Mr. Maitri, however, submits that Appellate Tribunal has entertained the review only for the purpose of deciding the application for condonation of delay and not on the merits.

3. Mr. S.A. Khan, learned counsel for respondent No. 1 submits that the impugned order dated 23.07.2014 is a composite order and both the appeals stand decided by the Appellate Tribunal. He contends that the concluding portions of the order may not be happily worded but, in fact, the Tribunal has decided the second appeal on merits as well. Mr. Khan contends that filing of the review petition was not bona fide as there is no provision for filing of review under the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI Act) and review is maintainable only under Section 5(A) of the Debts Recovery Tribunal(Procedure) Rule, 1993. Mr. Khan further contends that the scope of a review petition is limited only to an error apparent on the face of the record. A review would not be maintainable to agitate or re-appreciate evidence and where a decision is sought on the merits of the matter. He submits that the DRT rightly rejected the review petition and the Appellate Tribunal rightly dismissed both the appeals, the first appeal being barred by limitation and the second appeal on merits.

4. We have heard learned counsel for the parties. Although Mr. Maitri has laboured hard to satisfy the Court that there was sufficient grounds for condonation of delay of 4929 days in filing an appeal against the order of 31.05.1999, we are not impressed by the submission as there is inordinate delay of roughly 14 years arising out of an order passed under the RDDBFI Act, an act which came into force with the aim and objective of speedy decisions in banking issues. The order passed by the DRT give the details of the grounds urged by the petitioner in the review petition. Paras 5 and 6 of the order passed by the DRT read as under:--

"5. The provision for review is available in Section 5(A) of The Debts Recovery Tribunal(Procedure) Rule, 1993. The Act does not contain any provision for review but it is available only in the rules. As per the relevant provision, any party considering itself aggrieved by an order made by the Tribunal on account of some mistake of error apparent on the face of the record desires to obtain a review of the order made against him, may apply for review of the order of the Tribunal which has made the order. So what can be reviewed is an order which contains some mistake of error apparent on the face of the record. By way of this application the applicant wants to go to the merits of the case, have a rowing enquiry on the material placed and to have a fresh judgment on merits. The applicant is not concerned about any error apparent on the face of the record. If the Tribunal had passed an order without allowing the party to adduce evidence then it should be challenged by way of an appeal. After suffering a judgment when the party was a participant in the trial he cannot later come and say that

evidence was not brought in. The Tribunal may adopt its own procedure. The Tribunal decided to act on materials placed before it by way of verified and pleadings documents. I am not expected to sit in judgment over the view adopted by the then Presiding Officer. I cannot act as an Appellate Court and have a reappraisal of the material placed before this Tribunal by way of this application. The Hon"ble Supreme Court in Lily Thomas, Vs. Union of India and Others, has made it clear that the scope of review application is only by the correction of mistake and not to substitute its view. The Supreme Court held that the mistake apparent on the face of the record cannot mean error which has to be fished out and searched. It is also pertinent to note that the power to review available under Order 47 Rule 1 CPC is wider than the power to review contained in Rule 5(A) of the RDDBFI Act which is very limited in scope.

6. The application for review as per Rule 5(A) should have been filed within 60 days from the date of order. This application is filed long after that prescribed period and application is barred by limitation. The applicant then relies upon certain judgments to say that there is no bar of limitation to invoke the jurisdiction of the Court u/s. 151 of Code of Civil Procedure. At the outset I have to say that the points brought to my notice by review applicant is not one coming under section 151 CPC. The purport of 151 CPC is inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. This Tribunal had considered the materials placed before it. The fact that other defendants are not proceeded is not a ground available to the applicant. The materials placed before me are not the one to invoke Section 151 CPC and provisions of CPC is not applicable in view of section 22 Sub-section (1). This Tribunal is guided by the principles of natural justice and for the purpose the principles of natural justice is codified in rule 5(A) of the Rules. Therefore, the judgment relied upon by the counsel in his written statement which was laid down under Section 151 CPC cannot be made applicable. The counsel relies upon Ram Chander Singh v. Savitri Devi & Ors (Civil) Appeals No. 8216 of 2003, a judgment of Supreme Court dated 09.10.2003) but that was a case where fraud and falsehood was discussed. I cannot find any fraud and falsehood in the applicant's case. Thus, the grounds urged by the applicant to attack the judgment cannot be considered in this application. Perhaps they may be grounds in an appeal but this Tribunal cannot act as an appellate court on its own judgment. Thus, I find that the application for review is liable to be dismissed and the same is dismissed."

5. The Appellate Tribunal, at the very outset, crystallized the issue which lay before the Appellate Tribunal. It would be useful to refer to internal page 3 of the order dated 23.07.2014 passed by the Debts Recovery Appellate Tribunal, which reads as under:

"A perusal of the impugned order dated 28.1.2013 would show that the respondent bank had filed the OA for the recovery of Rs. 43,92,640/- along with interest and costs. This claim was allowed. The Tribunal below considered the

plea available under rule 5A of the DRT (Procedure) Rules, 1993, it is observed that such a review can be sought on the ground of some mistake or error apparent on the face of the record. Rule 5A of the Rules read as under:--

"5A Review (1) Any party considering itself aggrieved by an order made by the Tribunal on account of some mistake or error apparent on the face of the record desires to obtain a review of the order to the Tribunal which had made the order.

(2) No application for review shall be made after the expiry of a period of sixty days from the date of the order and no such application shall be entertained unless it is accompanied by an affidavit verifying the application.

(3) Where it appears to the Tribunal that there is no sufficient ground for a review, it shall reject the application but where the Tribunal is of opinion that the application for review shall be granted, it shall grant the same.

(2) Provided that no such application shall be granted without previous notice to the opposite party to enable him to appear and to be heard in support of the order, a review of which is applied for."

Accordingly, it is noticed that review is available on a limited ground of mistake or error apparent on the face of record whereas the appellant/applicant was seeking review requiring the Tribunal; to go into the merits of the case having a roving enquiry of the material placed and to pass an order. No error or mistake on the face of the record was pleaded to seek review. Apparently, there was no ground urged by the appellant/applicant on which power of review could be so exercised. The Tribunal below has rightly observed that the proper course for the appellant/applicant was to file an appeal in case he had any grievance against the issue decided on merit and re-appraisal of evidence could take place only in the appeal and not in the application for review.

From the finding recorded by the tribunal it is possible to view that the remedy of review invoked by the appellant/applicant was not bona fide. If the appellant/applicant had genuinely been keen and interested to seek the review, he was bound to take measures to get his application for review decided at some early date. It cannot be expected of a person genuinely seeking review to allow his application to spend for 14 years. The appellant/applicant cannot thus escape the blame and responsibility of not pursuing his remedy with due diligence or in a bona fide manner. To condone this inordinate delay on the ground of pendency of review, therefore, is not considered a good reason and the delay cannot be condoned on this ground."

6. Mr. Khan has placed reliance on the decision rendered by the Supreme Court in the case of Kamlesh Verma Vs. Mayawati and Others, in support of his submission that the power of review is to correct mistakes and not for substitution of a view already taken, the Supreme Court has culled out grounds where review would be maintainable and not maintainable, which reads as under:--

"(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The review cannot be maintained when there is:--

(i) A repetition of old and overruled argument which is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative."

7. In our view, the application seeking review of the Order dated 31.5.1999 was not maintainable, neither the application was bona fide. The submission of Mr. Maitri that the second appeal was not decided by the DRAT is also without any merit. Although in the concluding portion of the impugned order gives an impression as of the Debts Recovery Tribunal has not rendered its decision with regard to second appeal but complete reading of the order would show that the Appellate Tribunal has threadbare discussed the law of review and also noted the submissions of the counsel for the parties and reached a conclusion that by the review petition, the petitioner was not seeking correction of any error or mistake on the face of the records but was seeking a fresh decision on the merits of the matter. Reading of para 86 of the writ petition also shows that the petitioner seeks a fresh decision on merits. Para 86 reads as under:

"86. That under these facts and circumstances the Petitioner has no alternative, efficacious remedy except to file the present writ. It is a matter of record that both the Courts below have not considered the Petitioner's case on merits and

thereby have committed a gross error on the face of it. The Petitioner has pursued remedies available to him in accordance with law, but still Petitioner's averments are not being considered on merits and contrary to this factual position, Petitioner is being penalized without just and proper adjudication in accordance with law."

8. The law with regard to condonation of delay is well settled. A party, who approaches the Court must satisfy the Court that he was prevented by sufficient cause from prosecuting its case and moreover the application should be bonafide and the delay should not have been on account of carelessness or negligence. A person must show that he had acted diligently. Upon being satisfied, with regard to the above factors, the delay can be condoned. The Court has to examine whether the mistake is bonafide or was merely a device to cover an ulterior purpose (See : Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, ; Mata Din Vs. A. Narayanan, ; Parimal Vs. Veena @ Bharti, ; and Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, .).

9. The law of limitation is founded on public policy. The same is to be, and as long as the statute exists, applied judiciously.

10. According to Halsbury's Laws of England, Volume 24, p. 181, the Courts have expressed at least three differing reasons supporting the existence of statutes of limitations and these are : (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.

11. We find there is no infirmity in the order of the DRT and also the DRAT. The filing of the review by the petitioner, in our view, was not bona fide. Neither the time spent nor the review petition can be considered as a sufficient cause nor such a ground has been urged before us. A preliminary objection was raised by Respondent No. 1 that the review was not maintainable at that stage itself, the petitioner should have sought liberty to file an appeal and not waited for 14 long years for a decision to be rendered in proceedings where public money is involved. Strong arguments have been raised on the merits of the matter, but we are afraid that at the fag end of more than 14 years in these proceedings, we cannot go into the merits of the matter. We find no grounds to interfere.

12. The writ petition is accordingly dismissed.

CM.APPL 12832/2015(stay)

13. Since the present writ petition has been dismissed, the application also stands disposed of.