
(1998) 07 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : R.A. No. 119 of 1998 in Civil Writ Petition No. 9391 of 1994

Ram Chander and Sons

APPELLANT

Vs

Union Territory

RESPONDENT

Date of Decision : 17-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 120 PLR 575

Hon'ble Judges : M.L. Singhal, J;G.S. Singhvi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—By this order we are deciding 17 applications filed by the petitioners under Order 47, Rule I read with Section 151 C.P.C. for review/recall of the order dated December 19, 1997, passed by this Court dismissing the writ petitions filed by the applicant.

2. At the outset, we deem it proper to mention that by an order dated 8.5.1998, the Court has already rejected two grounds on which the petitioners have sought review of the order dated 19.12.1997 (Since reported as Ram Chander and Sons Vs. Union Territory of Chandigarh and Another, . The relevant extract of order dated 8.5.1998 is reproduced below :-

"Learned counsel for the applicants argued that the affidavit filed by Shri Krishanjit Singh, which constituted the basis of the decision of writ petition No. 10521 of 1996, Dr. Sahib Singh and Sons v. Chandigarh Administration through Administrator and Ors., could not have been relied upon for the purpose of rejecting the plea raised by the petitioners. He further argued that a grave prejudice has been caused to the petitioner(s) because the Court decided the writ petition by assuming that the rate of rent payable for similar properties is around Rs. 50,000/- although in fact the rate of rent is much less than Rs. 50,000/- per annum. The last submission made by the learned counsel is that

the petitioner could not have been saddled with liability to pay interest because no such direction has been given in Sahib Singh's case. We have thoughtfully considered the submissions of the learned counsel but do not find any substance in the two contentions urged by him. Admittedly, the SLP filed before the Supreme Court against the order passed in C.W.P. No. 10521 of 1996 has been dismissed by the Apex Court. Therefore, the applicants who had sought relief by stating that their petition is similar to the writ petition of Sahib Singh's case cannot now plead that their case is different than Sahib Singh's case. That apart, the learned counsel could not show that the situation of the property leased out to Sahib Singh and sons is different than the property of the petitioner. As a matter of fact, both the properties are situated in Sector 17, Chandigarh, and their location is within few yards of each other. Therefore, in view of the rejection of the various contentions urged on behalf of Sahib Singh and Sons and the dismissal of the SLP filed by Sahib Singh and Sons, the applicants cannot seek review of the order dated 19.12.1997. Hence, the first two grounds raised by the applicants are rejected."

3. Therefore, the only point which remains to be decided is whether the direction given by the Court for payment of interest @ 18% for the period during which the payment of rent at the rate specified in the notices which were under challenge in the writ petitions remained stayed.

4. The argument of the learned counsel for the applicants is that the direction given by the Court for payment of interest on the arrears of rent is erroneous because no such direction was given in C.W.P. No. 10521 of 1996, Dr. Sahib Singh and Sons v. Chandigarh Administration, which was dismissed on July 31, 1997. S/Shri M.S. Sarin, Nidesh Gupta and Anand Chhiber submitted that the applicants will stand discriminated due to the direction of payment of interest because other similarly situated persons have not been called upon to pay interest on the arrears of rent. They argue that the voluntary deposit of the arrears of rent has been accepted by the respondents from other similarly situated tenants without insisting on payment of interest and this should be treated a valid ground for modifying the direction regarding payment of interest. Learned counsel further submitted that even if the direction for payment of interest is held justified, the rate of interest should be reduced from 18% to 9% because the respondents have been paying interest on the amount deposited with them @ 9% per annum. Shri Nidesh Gupta challenged the correctness of the direction for payment of interest on the additional ground that no such plea was raised by the respondents in the written statement. He relied on Allam Gangadhara Rao Vs. Gollapalli Gangarao, , Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, ; Om Prakash and others Vs. Ram Kumar and others, , and S. Nagaraj and Ors. v. State of Karnataka and Anr. 1993 (5) S.L.R. 1. Submission of Shri Ashok Aggarwal is that the impugned order does not call for review or rectification/modification because the Court has awarded interest on the arrears of rent after due deliberation. He submitted that the petitioners who retained public money on the basis of stay order passed by this Court are

bound to pay interest on the arrears and the Court has rightly saddled them with the liability to pay interest. Shri Aggarwal pointed out that in Dr. Sahib Singh's case (supra) directions for interests were not passed by the court because no stay order had been granted by the Court on the payment of rent at the revised rate. Learned counsel also submitted that failure of the Administration to realise interest from other tenants cannot be made a ground to plead that the order passed by the High Court is erroneous.

5. We have considered the respective submissions in the light of the material available on record and agree with Shri Aggarwal that the order dated 19.12.1997 does not require review or modification. Admittedly, during the pendency of the writ petitions the applicants did not pay rent at the rate fixed by the Chandigarh Administration at the time of renewal of their lease/licence. Rather, they continued to pay rent at the old rate in the garb of the stay order passed by the High Court. In other words; they paid rent @ Rs. 2,671/- per month although in law they were obliged to pay rent @ Rs. 14,000/- and more. Thus, the petitioners kept the amount due to the respondents with them and it is reasonable to presume that the same was utilised by them in furtherance of their business interests. In view of this, the direction given by the Court for payment of interest @ 18% in respect of the period during which the stay order passed by the High Court remained operative cannot be termed as erroneous or unjustified.

6. The plea of discrimination raised by the applicants also merits rejection because the alleged failure of the Chandigarh Administration to realise rent from other persons cannot be made basis for giving immunity to the petitioners from their liability to pay interest on the public money which was usurped by them on the basis of the stay order passed by the High Court.

7. We also do not find any reason or justification to reduce the rate of interest from 18% to 9% on the ground that the respondents have been paying interest to others at that rate. If the petitioners were to borrow money from the market for enhancing their business interests, they were required to pay interest above 18%. By utilising the public money they avoided payment to interest at the market rate. Thus, there is no valid ground to modify the rate of interest.

8. Shri Nidesh Gupta's contention that the Court could not have awarded interest to the respondents because no such prayer was made in the written statement is based on a wholly erroneous premise because these are not the cases in which the respondents have sued the petitioners for payment of arrears of rent. If that would have been the position, the argument of the learned counsel that no interest could be awarded in the absence of specific prayer may have merited further consideration. However, the fact of the matter is that the petitioners obtained stay order from the High Court and did not pay the rent at the specified rate for a long period of 3 to 4 years and utilised huge amount of public money for advancing their own cause and this amply justifies the direction for payment of interest.

9. The judgment of Andhra Pradesh High Court in A. Gangadhara Rao's case (supra) lays down the proposition that a party is expected and is bound to prove the case as alleged by him and as covered by issues framed and it can only succeed according to what is alleged and proved; *secundum allegata et probata*. The Court further held that the party should not be allowed to succeed on a case which it has failed to set up.

10. This principle has no bearing on the facts of this case because, as already mentioned above, the respondents did not seek intervention of the Court. Rather, the applicants had challenged the enhanced rate of rent by filing the writ petitions in the High Court. Thus, it cannot be said that the Court has given relief to the respondents over and above the prayer made by them.

11. In *Om Prakash and Ors. v. Ram Kumar and Ors.*, (supra) and *Krishna Priya Ganguly v. University of Lucknow* (supra), the proposition similar to the one laid down in A. Gangadhara Rao's case (supra) has been laid down by the Apex Court. The proposition which has been laid down in *S. Nagaraj v. State of Karnataka*, (supra), and which has been relied upon by the counsel for the applicants reads thus:-

"Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of *stare decisis* is adhered for consistency but it is not an inflexible in Administration Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on enquiry and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principal be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it was of fact or law. But the root from which the power flows is the anxiety to avoid injustices. It is either statutory or inherent. The latter is available where the mistake is of the court. In Administrative law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (R.M. Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to Stage's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue".

12. However, in our considered view, the above stated principle has no relevance in the context of the issue raised in these applications.

13. We may also notice the judgment of the Supreme Court in *Gursharan Singh*

and others etc. Vs. New Delhi Municipal Committee and others, . In this case the Apex Court held that the appellants, who had not paid the licence fee can be saddled with the liability to pay interest because they did not pay arrears of fee for 12 years on the basis of the interim order passed by the Apex Court.

14. On the basis of above discussion, we hold that the direction given by this Court to the applicants petitioners to pay interest does not call for review or modification. Hence the applications are dismissed. We also direct that in view of the order dated 8.5.1998 passed in C.M. No. 10301 of 1998 (C.W.P. No. 9391 of 1994) and other similar Civil Miscellaneous Applications filed by other petitioners, they shall pay interest on the arrears @ 18% w.e.f. 19.12.1997. This shall be in addition to the interest payable in terms of the order dated 19.12.1997.

ORDER DATED JULY 17, 1998

After the pronouncement of order Shri Anand Chhiber, counsel for the applicants made a statement that his client undertake to pay the amount of interest but some time may be allowed to them to pay the amount of interest in terms of order dated 19.12.1997 and the order passed today. He requests for grant of six months time for this purpose but having thoughtfully considered his request, we are of the opinion that ends of justice would be adequately met if three months time is allowed to the applicants to pay the amount of interest. Accordingly, we direct that the applicants shall pay the amount of interest to respondents within a period of three months from today failing which the respondents shall be free to cancel their lease and take other coercive measures for securing possession of the property.

Copy of this order be given dasti.