

(1993) 02 CAL CK 0001
In the Calcutta High Court
Case No : Revisional T. No. 3697 of 1992

Ranjit Kumar Baral

APPELLANT

Vs

C.E.S.C. Ltd., Victoria House and Others

RESPONDENT

Date of Decision : 24-02-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 1 Rule 8, Order 47 Rule 1, 141, 151

Constitution of India, 1950 — Article 12, 226

Citation : 97 CWN 673

Hon'ble Judges : N.N. Mitra, J

Bench : Single Bench

Advocate : B.N. Sanyal, Keya Banerjee and Hirayana Chowdhury, for the Appellant; Arijit Chowdhury, Samir Chakraborty, Rabi Prosad Mukherjee and A.K. Ganguly, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Mitra, J.—The review application has been assigned to me since the Hon''ble Justice Paritosh Kumar Mukherjee declined to take up the review application on personal grounds. In this review application, though it is defective (as the writ number has not been given, and the certified copy of the order sought to be reviewed has not been annexed to the review application), the petitioner has sought for review of the order dated 11th November, 1992 passed by Paritosh Kumar Mukherjee, J. dismissing the writ application as not maintainable on the ground that the Calcutta Electric Supply Corporation Limited is not an authority within the meaning of Article 12 of the Constitution of India.

2. Mr. Sanyal, the learned counsel, appearing on behalf of the petitioner contends inter alia, that the above finding was arrived at by the court without hearing him, and also without considering at all the question of maintainability of the writ application from the true perspective and further, the court has not considered various judicial decisions of the Hon''ble Supreme Court, where such a concern

has been held to be an authority within the meaning of article 12 of the Constitution of India, and in support of his contention, the learned counsel cited the decisions of the Hon'ble Supreme Court in CESC Limited, etc. vs. Subhash Chandra Seh & Ors., reported in 1992 (1) LLJ page 475 and in Anadi Mukta Satguru Shree Muknerjee Vandas Swami Suvarna Jayanti Mahotsav Smarak trust & Ors. vs. V.R. Rudani & Ors., reported in 1989 (2) LLJ page 324. The learned counsel also refers to an order of the appeal Bench presided over by the then Chief Justice Desai, dated 3rd March, 1992 in FMAT No. 2827 of 1991 which was preferred by the aggrieved party against the CESC from an order passed in a writ application, and contends that no objection was raised by the CESC before the appeal Bench in that appeal regarding the maintainability of the appeal, and as the appeal Bench passed orders in the said appeal, it should be presumed, that the appeal Bench passed such orders considering CESC Limited as an authority within the meaning of Article 12 of the Constitution of India. The learned counsel further refers to certain documents including the balance-sheet and the annual report of the CESC Limited to show, that the company is an authority within the meaning of Article 12 of the Constitution of India, as it performs public duties in supplying electricity to its consumers including the general public.

3. Mr. Arijit Chowdhury, learned senior counsel, appearing on behalf of. CESC Limited has contended inter alia, that there is no Government control over the activities of CESC Limited either in administrative or financial matters. Mr. Chowdhury further contends, that the documents, that are now produced before this Court on the ground that in spite of due diligence, the petitioner could not get the same at the time, when the writ application was dismissed, are always available, since the CESC Limited is a public limited company, and the petitioner could very well get a copy of the balance-sheet from the authority concerned on payment. Lastly, Mr. Chowdhury contends, that the review application is not maintainable on the ground, that Order XLVII of the Code of Civil Procedure, does not apply to a writ application in view of the Explanation to Section 141 of the Code, and even if such procedures do apply, the grounds taken in the review application do not come within the purview of Order XLVII Rule 1 of the Code of Civil Procedure.

4. There was a divergence of judicial opinion on the question, whether all the procedures prescribed for suits would apply mutatis mutandis to writ proceedings, before insertion of the Explanation to Section 141 of the Code of Civil Procedure, by the CPC (Amendment) Act, 1976. According to one view. Section 141 of the Code was directly attracted to an application under Article 226 of the Constitution of India. Thus Order XXII was made applicable to writ proceedings and also the provisions of Order I Rule 8 and Rule 10 (2) of the Krishnalal Sadhu and Others Vs. State of West Bengal and Others, ; Baldev Raj vs. State of J & K AIR 1980 J & K 50. The other view was, that the provisions of the Code did not in terms govern the writ proceedings but the Court could apply the principles as distinguished from the technical provisions of the Code to the writ proceedings Bhagwan Singh vs. Additional Director of Consolidation. AIR

1968 Pun 360 and Thresia Vs. Xavier, (Full Bench). However, there was a considerable authority for the view, that review of an order passed in a writ proceeding was permissible, it being a proceeding of civil nature, but such review was not permissible, unless the grounds under Order XLVII Rule 1 of the Code were made out. Reference may be made to the decisions in Shivdeo Singh and Others Vs. State of Punjab and Others, ; State of U.P. vs. Jawaharlal, AIR 1975 Allahabad 101; Abdul Karim vs. D.M.O. Ernakulam, AIR 1774 Ker 167.

5. The above divergence however, has been set at rest by the Explanation added to Section 141 of the Code by the CPC (Amendment) Act, 1976 - the amendment coming into force with effect from 1st February, 1977. The said amendment however, is not retrospective in operation. As per the said Explanation, the procedures provided in the Code of Civil Procedure, are not applicable to writ proceedings and the decisions in Government of India vs. National Tobacco. AIR 1977 A.P. 150 (Full Bench); Hemraj Vs. Income Tax Recovery Officer, Jodhpur, ; Hansraj vs. State of H.P. AIR 1978 H.P. 63; Padamnarayan vs. G.C. Jain, AIR 1984 Del 310; Sailendra vs. State of West Bengal, (1981) 2 CLJ 99; Dunlop Minibus vs. R.T.A. (1982) 1 CLJ 388 may be looked into. However, still then, it is well settled, that the statutory principles of the Code would apply to the writ proceedings and the principles underlying Section 151 of the Code in the matter of re-consideration or review of judgment or order would also apply to such proceedings although Section 151 of the Code as such, is not attracted to a writ petition, as the High Court has Jurisdiction in appropriate cases to undo a wrong done to a party and to review its order. The decisions in Saktinarayan vs. Union of India (1980) 1 CLJ 360 : Union of India and Another Vs. Sahkari Khand Udyog Mandli Ltd., and J.G. Sinkar vs. State of Maharashtra, AIR 1981 Bombay 184 may be referred to.

6. Moreover, there is nothing in Article 226 of the Constitution of India to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors. However, the inherent powers though ex facie plenary, are not to be treated as unlimited or unabridged, but they are to be invoked on the grounds analogous to the grounds mentioned in Order XLVII Rule 1 of the Code.

7. The grounds on which a review can be asked for under Order XLVII Rule 1 of the CPC are :-

- i) discovery of new or important matter or evidence which after the exercise of due diligence was not within the knowledge of the applicant praying for review, or could not be produced by him when the order was made, or
- ii) on account of some mistakes or errors apparent on the face of the record, or
- iii) for any other sufficient reason.

The expression "for any other sufficient reason", however must mean a reason

sufficient on grounds atleast analogous to those specified in the above ground nos. (i) and (ii) and it has been so held by the Privy Council in its well known decisions in (1922) ILR 3 LAH 127 (Privy Council) and Biseswar Pratap Singh vs. Parath Nath. 61 Indian Appeals 378 = (AIR 1934 PC 113). The Hon''ble Supreme Court has also reiterated the same view in M.M. Katholicos vs. M.P. Athnasius, AIR 1954 S.C. 526 . Reference may also be made to the decisions of this Hon''ble Court in The Administrator General of West Bengal Vs. Kumar Purnendu Nath Tagore, and Anath Bandhu vs. Raghu Nath 88 C.W.N. 804.

8. Secondly, review is not a routine procedure. Material error manifest on the face of the earlier order resulting in miscarriage of justice must be proved. Mr. Sanyal contends that the decisions cited by him before me as referred to above, if are considered property, would show that CESC Limited is an authority within the meaning of Article 12 of the Constitution of India, and on that ground, the order of Paritosh Kumar Mukherjee, J. should be reviewed; but in a decision is wrong on law or that a finding is erroneous, that is no ground for review- the purpose of the provisions of Order XLVII Rule 1 of the Code is not to enable the Court to write a second judgment. If a Court decides a question of law incorrectly, it is no ground for review, it is only vulnerable in appeal. The grounds, which can be urged in a petition for review, are quite different from the grounds, which can be argued in an appeal. Discovery of new point is no ground for review, nor the fact that a law point was not argued before the Court. Error in finding also is no ground for review. A review is by no means an appeal in disguise, whereby an erroneous decision is re-heard and corrected, but it lies only for correcting a patent error. Might, be the learned judge passing the order did not give any reasoning for arriving at his finding, but that in my view, can not be termed to be an error apparent on the face of the record. The said point can very well be agitated before the appeal Bench. Further, there is a marked distinction between an erroneous decision on a question of law and overlooking a material provision of law. Thus, when a specific provision of law is not pointed out to the Court at the time of passing of the order, such an order suffers from mistake apparent on the face of the record justifying review, but when the decision of a Court is erroneous on a question of law and not on the non-consideration of a specific provision of law such decision is not subject to review. It is not the contention of Mr. Sanyal that any specific provision of law was not considered by Paritosh Kumar Mukherjee, J. in passing his order and as such, the said order cannot be said to be suffering from any mistake or error apparent on the face of the record.

9. The argument advanced by Mr. Sanyal on the basis of the documents produced by him before me, that such new and important documents could not be gathered by his client after the exercise of due diligence and were not within his knowledge previously, for which the same could not be produced before Paritosh Kumar Mukherjee, J. when the order, sought to be reviewed was made, and had those documents been considered, his Lordship could have held that CESC Limited is an authority within the meaning of Article 12 of the Constitution

of India, does not appeal to me at all, inasmuch as those documents are nothing but the balance-sheet and the annual report of the CESC Limited, which are always readily available, since CESC Limited is a public limited company, and are not documents of any special kind, and as much, non-production of such documents before Paritosh Kumar Mukherjee, J. has not made the order of his Lordship erroneous on account of some mistakes or errors, aparent on the face of the record, so that it should be reviewed. Lastly. I hold that there is also no other sufficient ground on which the order of Paritosh Kumar Mukherjee, J. requires to be reviewed, and since the grounds taken in the review application do not come within the purview of Order XLVII Rule 1 of the Code of Civil Procedure, or are analogous thereto, the review application is without any merit, and accordingly, stands dismissed. Let plain copies of the order, countersigned by the Assistant Registrar (Court), be given to the learned advocates for the parties, as prayed for.