

(2015) 04 MP CK 0151

In the Madhya Pradesh High Court

Case No : Review Petition No. 230 of 2015

Satya Pal Anand

APPELLANT

Vs

Bal Niketan Nyas and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Constitution of India, 1950 — Article 227

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 13

Citation : (2015) 3 MPLJ 83

Hon'ble Judges : A.M. Khanwilkar, C.J.;Alok Aradhe, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Alok Aradhe, J—This interlocutory application filed by the petitioner in Writ Petition No. 4638/2015 which was dismissed by this Court on 6-4-2015, has been registered as review petition by the Office. In this review petition, the petitioner has prayed for following reliefs:

"In view of the submissions urged above, the order of dismissal in limine passed on 6-4-2015 be kindly recalled, granting exemplary costs to the petitioner who has to travel to Jabalpur, in the absence of any Bench of this Hon"ble Court, at Bhopal, being perhaps the only capital of a State having no Bench of the Hon"ble High Court there only because the power coupled with duty stood not exercised in violations of the constitutional mandates and guarantees to provide cheap and speedy justice to the citizenry in India, and it be, therefore, kindly provide because providing justice is the paramount duty of the State and till then cases of petitioner and others coming from outside Jabalpur, be directed to be listed on top priority on the top of the lists in each and every Court and the Registry be directed to list the cases both for hearing on merits and admission, grant of ex parte and ad-interim reliefs soon upon filing of the writ petitions or other applications as herein filed, recalling the orders given to the contrary and

allowing all the Hon''ble Judges to exercise the Judicial Powers vested in them as was being done since for long many years because the lawful decentralization of judicial powers is the constitutional command.

And the facts recorded and observations recorded in paras 1, 2, 3, 4, 5, 6, etc. be kindly deleted as the subject-matter is sub-judice and recording of said facts and orders has already caused great prejudice to the petitioner when matter is awaiting hearing as per law of the MCC No. 495/2015. And such other reliefs or further reliefs as deemed deserved in law be kindly granted to meet the ends of justice. And contempt proceedings as prayed above against Mrs. Shobha Menon and other contemnors be kindly initiated as per law after notice suo motu and monthly rent payable be kindly declared to be payable at Rs. 75/- per month and excess collected be kindly directed to be refunded to the petitioner in directed time. And, Anand Trust be kindly allowed to join the petitioner in hearing of this writ petition following the law declared in Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others, AIR 1987 SC 294 : (1986) 1 JT 1071 : (1986) 2 SCALE 977 : (1987) 1 SCC 227 : (1987) 1 SCR 458 : (1987) 1 UJ 88 "

In Writ Petition No. 4638/2015 which was filed under Article 227 of the Constitution of India, the petitioner had prayed for the following reliefs:

"7. (a) In view of the submissions made above, the operation of the order directing the deposit of Rs. 10,13,078/- before 23-3-2015 be kindly stayed till the decision of this writ petition, and the cheque dated 20-3-2015, presented before the learned Court below drawn in its favour, as was directed by it, be directed to be returned, to the petitioner, which had been presented, as a law abiding citizen, but, it was directed not to be en-cashed then, on 20-3-2015 and case is fixed for hearing on 30-3-2015, as the stay order prayed in Writ Petition No. 2804-2008 had not been then granted and liberty was granted to file this writ petition by the order e-mailed to the petitioner dated 24-3-2015. Therefore, stay order be kindly e-mailed to the learned Execution Court below adopting innovative approach to do justice or by Fax or Telephone directing the learned Principal Registrar Judicial to communicate the order as soon as it is passed, directed a CC also to be provided to the petitioner, soon upon passing of the prayed order ex parte;

(b) And, the hearing of the MJC No. 40/2013 be kindly directed to be made by such other Hon''ble Court, i.e. other than the one presided by the learned Judge Mr. B.B. Shukla and Mr. B.S. Bhadhoria to ensure impartial and fair hearing thereof as per laws of this land, as constitutionally guaranteed;

(c) And, the hearing of the Execution case No. 18/2013 be also similarly directed to be done by another learned Judge of the Court below, to provide justice as per law and constitutionally guaranteed, to provide impartial and unbiased hearing, as per submissions made in para (b) above;

(d) And, in view of the submissions made supported with judgments of Hon''ble Supreme Court, the payment of monthly rent be kindly reduced to Rs. 75/- per

month being the agreed rent as the petitioner is not a trespasser but statutory tenant not liable to pay any damages or mesne profit as per laws of this land, but only the admittedly agreed rent @ Rs. 75 per month, directing refund of excessive amount deposited till 31-6-2015;

(e) And, the learned Court below be kindly directed to take steps as per law to collect the amount of the Bank Draft cited hereinabove from the State Bank of India, Bhopal, because having paid the amount in its favour, in the manner it was demanded, the petitioner has no more any authority to deal with it, and to fix the judicial responsibility for its not in time collection and for not issuing its receipt in time, the deserved directions be kindly given, and granting other, deserved reliefs;

(f) And, contempt proceedings criminal be kindly initiated suo motu against the learned Senior Advocate Mrs. Shobha Menon and administrative action against her be also kindly initiated suo motu to withdraw her status of a learned Senior Advocate as per law;

(g) And such exemplary and compensatory costs as deemed just be kindly awarded considering the high costs being suffered by the petitioner, as per law, who resides at Indore;

(h) And, that the Bal Niketan Nyas and its Pradhan Kailash Agrawal and the State of M. P. be kindly directed to pay a compensation of Rs. 15 Lakhs by each of them in all not less than Rs. 30,00,000/- because of unlawful entry made in the premises on 23-4-2014 and causing great injury to the commercial reputation, dignity and self respect of the petitioner and for the losses caused because of breaking the fixtures, showcases, stands racks, etc. and throwing on the public road various highly valued goods and loss caused by breakage and otherwise thereby and a compensatory cost of not lesser than Rs. 2 Lakhs be kindly directed to be paid to the petitioner by the two concerned presiding officer of the executing court who had issued knowingly without jurisdiction the warrant for the delivery of the physical possession knowingly exceeding the lawful jurisdiction, and, who had passed acting contemptuously the order of dismissal dated 16-12-2014 of MJC No. 40/2013 and other unlawful orders knowingly acting without jurisdiction and the order of the dismissal of MJC 561/2012 knowingly without jurisdiction. And granting such other and further reliefs as deemed deserved in law."

2. We have heard the petitioner at length. The petitioner has submitted that the writ of certiorari does lie to quash order of inferior courts which have acted without jurisdiction and the English Common Law view is not applicable to the countries having written Constitution with fundamental rights and judicial review which is the basic feature of the Constitution of India. It is further submitted that if a judicial order which violates a fundamental right, is a void order. No one should suffer because of the mistake committed by Court. It is also urged that the doctrine of alternative remedy would not be applicable in case and order has

been passed by Authority without jurisdiction and in violation of principles of natural justice or in a case where vires of an Act has been challenged. In support of his submission, the petitioner has placed reliance in the decision in Committee of Management and another v. Vice-Chancellor and others, (2009) 2 SCC 630.

3. We have considered the submissions made by the petitioner. From perusal of reliefs claimed in the interlocutory application filed by the petitioner which has been registered by the Office as review petition in juxtaposition with the reliefs claimed in the writ petition which have been reproduced supra, it is evident that relief No. 1 claimed in this interlocutory application is a substantive part of the relief which was not even claimed in the writ petition. Therefore, the same cannot be entertained by means of this interlocutory application.

4. So far as the second relief in this application is concerned, from close scrutiny of the order dated 6-4-2015 passed in Writ Petition No. 4638/2015, it is apparent that this Court has merely referred to the facts and has not made any observation therefore, the question of deleting the same does not arise.

5. As far as the relief pertaining to initiation of proceeding for contempt against learned senior counsel is concerned, the same has already been turned down for the reasons recorded in paragraph 18 of the order dated 6-4-2015 passed in Writ Petition No. 4638/2015 which reads as under:

"18. The relief claimed by the petitioner in paragraph 7(f) is with regard to initiation of suo motu proceeding against senior counsel. In our considered opinion, such a relief, is misconceived as in the proceeding under Article 227 of the Constitution of India, the contempt proceeding cannot be initiated, more so without making concerned person as respondent in the proceeding. As a result, even that relief need not detain us in disposing of this petition."

6. As far as the petitioner's prayer for a direction that rent of Rs. 75 per month is payable and excess rent be refunded to the petitioner is concerned, the same is also sans substance as the aforesaid aspect of the matter has been dealt with in paragraph 11 of the order dated 6-4-2015 passed in Writ Petition No. 4638/2015 which reads as under:

"11. In order to appreciate the scope of challenge to the aforesaid order it is pertinent to note that against judgment and decree of eviction dated 10-10-2012 passed by the trial Court, the petitioner has filed First Appeal No. 1037/2012 which was admitted by a Bench of this Court vide order dated 21-12-2012 and execution of the decree was stayed subject to fulfilment of conditions mentioned therein. The order passed by the Bench of this Court has already been reproduced in paragraph 5 of this order. That order has been allowed to attain finality. From perusal of paragraph 5 of this order it is evident that the Bench of this Court has directed the appellant therein to deposit the rent at the rate of Rs. 5692/- per month strictly in terms of section 13 of M.P. Accommodation Control Act, 1961. In view of order dated 21-12-2012 passed by a Bench of this Court in aforesaid First Appeal, the respondent No. 1 filed an application under section

151 of the Code of Civil Procedure in which prayer was made that since the petitioner has not complied with the terms and conditions of order dated 21-12-2012, therefore, warrant of possession be issued."

7. It is well settled in law that in the guise of review, rehearing is not permissible. In order to seek review it has to be demonstrated that order suffers from error apparent on the face of record. The Court while deciding the application for review cannot sit in appeal over the judgment or decree passed by it. [See: S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, AIR 2008 SC 719 : (2007) 5 CTC 881 : (2008) 1 JT 102 : (2007) 12 SCR 1050 , The State of West Bengal and Others Vs. Kamal Sengupta and Another, (2008) 8 JT 317 : (2008) 8 SCC 612 : (2008) 2 SCC(L&S) 735 : (2008) 3 SLJ 209 : (2009) 2 SLR 482 and Kamlesh Verma Vs. Mayawati and Others, (2013) 5 ABR 1267 : AIR 2013 SC 3301 : (2013) 4 CTC 882 : (2013) 4 RCR(Civil) 75 : (2013) 10 SCALE 113 : (2013) 8 SCC 320 : (2014) 1 SCC(L&S) 96 Even otherwise, the impugned order neither suffers from any error apparent on the face of record nor any jurisdictional infirmity warranting interference of this Court in review jurisdiction. From perusal of the application, we find no ground for recall of the order dated 6-4-2015 passed in Writ Petition No. 4638/2015, is made out. In the result, we do not find any merit in this review petition. The same fails and is hereby dismissed.