(2016) 09 PAT CK 0023

In the Patna High Court

Case No : Civil Review No. 233 of 2015 in Civil Writ Jurisdiction Case No. 7024 of 2015

State Bank of India APPELLANT

Vs

Surendra Yadav RESPONDENT

Date of Decision : 21-09-2016

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2017) 172 AIC 416 : (2016) 4 PLJR 1055

Hon'ble Judges : Mr. Kishore Kumar Mandal, J.

Bench : Single Bench

Advocate : Mr. Anil Kumar Singh, GP-26, for the State in C. REV. No.233 of 2015; Mr. Ashok Kumar Sinha, Sr. Advocate and Mr. Anupa Nand Jha, Advocate, for the Petitioner in C. REV. No.233 of 2015; Mr. Uday Chandra Prasad, Advocate, for the Opposite Parties in C. REV

Final Decision : Allowed

Judgement

Mr. Kishore Kumar Mandal, J.(Oral) - Heard Mr. Ashok Kumar Sinha, Sr. Advocate, for the petitioners and Mr. Uday Chandra Prasad for the opposite parties and Mr. Anil Kumar Singh GP-26 for the State.

2. The respondent-Bank of the writ petition (CWJC No. 7024 of 2015) has filed the present application for review of the order dated 31.07.2015 whereby the following direction was issued:-

"The Bank wants realisation of the dues. The petitioner wants release of the vehicle so that he can ply and earn from the vehicle and pay back the remaining loan dues. Keeping the vehicle idle with the Bank, in my view, will neither serve the purpose of the respondent Bank nor the petitioner. The interest of justice demands that the Court should direct the respondent Bank to release the vehicle of the petitioner bearing registration Mark and No. BR-11N-9540 conditionally on furnishment of an undertaking before the respondent Bank for payment of the remaining dues in easy instalments to be fixed by the respondent Bank. The petitioner should also produce the comprehensive insurance paper of the truck before the respondent Bank. No sooner the petitioner approaches the Bank with the aforesaid prayer and the documents, the appropriate/competent authority of the Bank shall release the vehicle of the petitioner conditionally after fixing easy instalments for payment of the remaining dues of the Bank. In case of default in complying with the condition(s) as may be fixed by the respondent Bank, it will be open to the respondent-Bank to take steps for seizure and other punitive action against the petitioner as provided under the law."

3. The writ petition was filed on 04.05.2015 for conditional/provisional release of the truck which was purchased by the opposite party 1st set on extending loan by the respondent-Bank and for which a certificate proceeding was pending before the Certificate Officer. The Court granted indulgence to the respondent Bank. However, finding that no counter affidavit was filed the writ petition was disposed of on 31.07.2015. The review petitioners have brought on record a paper publication of notice dated 09.06.2015 issued by the Bank for the auction sale of several vehicles, including the vehicle of the writ petitioner(opposite party herein) as the loanees were running in default of payment of the outstanding loan amount. The date of auction sale was notified on 12.6.2015. The public auction of those vehicles, including the vehicle of the writ petitioner opposite party was made on 12.06.2015 and it was sold to the highest bidder on 12.06.2015. The respondent-Bank issued a communication to the Certificate Officer regarding such auction sale of the subject vehicle of the said proceeding and deposit of the proceeds thereof in the loan account of the loanee?opposite party. The sale certificate dated 01.07.2015 issued in favour of the highest bidder (auction purchaser) is enclosed at Annexure-5.

4. Learned counsel for the review petitioners submitted that in these factual background the present application for review/recall of the order dated 31.07.2015 is filed. In support of his contention, he has relied on the following Judgments:-

(1) AIR 2005 SC 592 (Board of Control for Cricket, India v. Netaji Cricket Club)

(2) AIR 2000 SC 1650 (Lily Thomas v. Union of India)

5. Mr. Uday Chandra Prasad, learned counsel for the opposite party (loanee), on the other hand, would urge that the respondent-Bank was given sufficient opportunity to file affidavit. It was represented through a lawyer. They defaulted in filing the counter affidavit and bringing to the notice of the Court the relevant facts. From the diverse orders passed by the Certificate Officer, it would appear that there was a kind of settlement arrived between the parties for conditional release of the vehicle on payment of certain amounts which, however, was subject to approval of the higher authorities. In the light of the said deliberations made before the Certificate Officer, certain amounts was also deposited by the opposite party. It is not a case where the Court should invoke its review jurisdiction which has narrow confines. The review petitioners have, however,

controverted the stand of the opposite party that subsequently any amount was deposited in the loan account of the review petitioners. The amount as asserted by the opposite party/loanee was deposited in his personal account.

6. What has been presented through the review petition is a fact which unquestionably indicate that on the day when the writ petition was disposed of, the vehicle in question had already been auction sold. A public notice was issued by the Bank in the news paper for such auction of several vehicles the loanee(s) thereof were running in default. The vehicle(s) were mortgaged to the Bank. The certificate Court was duly informed after the auction sale of the vehicle. The Court, under order dated 31.07.2015, directed the respondent-Bank for release of the vehicle conditionally in favour of the Opposite party (writ petitioner) on furnishment of appropriate undertaking for payment of the remaining dues. The loanee-opposite party was running in default. The Bank was required to take steps for realisation of the dues. For this purpose, not only the vehicle of the writ petitioner-opposite party but some more vehicles were put on auction sale for which a public notice was issued. The opposite party(writ petitioner) herein had the knowledge/information of such contemplated auction sale of the vehicle on 12.06.2015 which was, however, not brought to the notice of the Court.

7. In the case of Board of Control for Cricket, India (supra) the Apex Court considered the scope of review. Such review can be granted by a Court on furnishment of three conditions:-

(i) Discovery of a new and important piece of evidence (ii)Mistake or error apparent on the face of the record and;

(iii) Any other sufficient reason.

"Any other sufficient reason" must mean a reason sufficient on grounds at least analogous to those specified in the Rule. The Apex Court in the said case at para 90 observed as under:-

"90. Thus, a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit."

8. Dealing with this aspect, the Apex Court in the case of Lily Thomas (supra) in para-52 observed as under:-

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273, held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error?.."

9. True it is as has been argued by the counsel for the opposite party that in the guise of review no second hearing on the merit of the case can be granted to the parties. But, it is a case where the review petitioners have contended that it is impossible for the respondent Bank (review petitioners) to comply with the order of the Court. If the respondent-Bank could not bring to the notice of the Court during hearing of the writ petition, it was also incumbent upon the writ petitioner (opposite party herein) to bring this fact to the notice of the Court who had the knowledge of the auction sale. The law in this regard is well settled. The Court cannot direct a party to do something which is impossible. The words "any other sufficient reasons" appearing under Order 47, Rule 1 CPC has to be given a broad connotation. It is not a case of granting re-hearing on the merit of the case. The Court cannot shut its eyes to the facts which would render the direction issued by it almost impossible to be carried out. The facts which ought to have been brought to the notice of the Court by the party were not brought before it. Had these facts been brought before the Court no such direction would have been passed. On appreciating these facts which are not much in dispute, the Court is of the considered view that there exists sufficient/adequate grounds/ reasons for the review petitioners to seek review of the order dated 31.07.2015.

10. In the light of discussions made herein above, this Court allows the Civil Review application.

11. MJC No. 2982 of 2016 is filed for non-compliance of the order dated 31.07.2015 passed in CWJC No. 7024 of 2015. In view of the order I have passed in Civil Review no. 233 of 2015, the present contempt application (MJC No. 2982 of 2016) is bound to be rejected. I order accordingly.

12. Mr. Uday Chandra Prasad, counsel for the writ petitioner-opposite party has however, submitted that he would represent before the respondent-Bank for waving of the rest part of the loan. The counsel for the review petitioners have also taken a stand that if any such application/representation is filed, the same shall be considered, according to the extant rules and regulations of the Bank, considering the facts that major part of the loan amount have been deposited by the writ petitioner-opposite party. Let such consideration be made.