

(1975) 11 GUJ CK 0007
In the Gujarat High Court

State of Gujarat and Another

APPELLANT

Vs

Dr. B.J. Bhatt

RESPONDENT

Date of Decision : 19-11-1975

Acts Referred:

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

Citation : (1977) 18 GLR 173

Hon'ble Judges : S.H. Shelh, J

Bench : Single Bench

Judgement

S.H. Sheth, J.—This petition has been filed by the original respondents for review of my judgment recorded in Special Civil Application No. 25 of 1974. Against the judgment under review, the respondents preferred L.P.A. No. 156 of 1974 in which they tried to produce additional evidence to convince the court of appeal that my judgment under review suffered from infirmity and that it should be reversed. I am told by Mr. Shah who appears for the original respondents that the court of appeal thought that respondents should First apply for review of my judgment in question and that after it was decided, the Letters Patent Appeal should be pressed for hearing, if necessary. Respondents have, therefore, filed this application for review of judgment in question. In my opinion this review petition is not maintainable. 1, therefore, refuse to entertain it.

2. Rule I of Order 47 of the CPC empowers a Court to review its own judgment on any one or more of the three grounds specified in that Rule. They are as follows:

- (1) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the person seeking review or could not be produced by him at the time when the decree or order was made.
- (2) Some mistake or error apparent on the face of the record; and
- (3) Any other sufficient reason.

On any one or more of the three grounds review of a judgment or an order can be sought if an appeal is allowed from any such order but has not been preferred or if no such appeal has been allowed. In the instant case the appeal against the judgment under review is allowed by Clause 15 of the Letters Patent and it has been preferred before a Division Bench of this Court. It is pending on the record of the High Court. Therefore, since the appeal has been allowed from the judgment under review and since such an appeal has been preferred, this petition for review of the judgment in question under Rule 1, Order 47 cannot be entertained. It is, therefore, not maintainable. The second ground why I hold that this review petition is not maintainable is that review is sought on the ground of discovery of new and important matter or evidence which after the exercise of due diligence could not be produced by a person seeking review or was not within his knowledge. All that has been stated in the review application on this aspect is as follows:

Thus, a large claim which would not be justified in view of the above fact will be raised against the public funds. It would, therefore, be in the interest of justice and public revenue to review the aforesaid decision and hold that there was in fact efficiency bar in the pre-revised scale of Class II Insurance Medical Officers.

This averment shows anything but exercise of due diligence on the part of the Government to find out relevant and material documents in support of their case in the writ petition and to place them before the Court. This is a case where there is not only no exercise of diligence much less due diligence, but want of exercise of any diligence whatsoever. In my opinion it is not open to a person who applies for review to say that merely because he has found some additional evidence to support the case which he earlier pleaded the judgment or order against which he complains should be reviewed". He must show that he had made all efforts and exercised complete vigilance to find out all possible evidence in support of his case and that yet he had not been able to discover and: find out the material which he seeks to place before the Court for seeking review of the judgment against which he complains. If he is able to satisfy the court on this aspect, then the Court is required to consider on merits his review application In the instant case there is not an iota of evidence nor is there even a bare statement made on behalf of the State Government to show whether any effort or attempt was made to find out the documents which have been placed before me now for seeking the review of the judgment in question. It appears to me that this is not only a case of no diligence having been exercised, much less due diligence, but"" this is a case of complete negligence and indifference. On these two grounds. I am of the opinion that this petition is not maintainable under" Rule 1, Order 47 of the Civil Procedure Code.

3. Mr. Shah has argued that I should review the judgment in question on account of "sufficient reason" within the meaning of that expression used in Rule I, Order 47. It is well-settled that "sufficient reason" is: analogous to two other grounds specified in Rule 1 of Order 47. That is the view which has been taken by Privy

Council in *Chhajju Ram v. Neki and Ors.* A I.R. 1922 S.C. 112. If "sufficient reason" is analogous to other grounds and one of the grounds requires exercise of due diligence, the expression "sufficient reason" cannot be construed to include indifference and negligence which are the contrary thereof. In my opinion, therefore there is no "sufficient reason" shown in this case to review the judgment in question. Mr. Shah has invited my attention to the decision of the Supreme Court in *Shivdeo Singh and Ors. v. State of Punjab and Ors.* AIR 1963 S.C. 1909. In the context of the powers conferred upon the Court by Article 226 of the Constitution and Section 151 of the Civil Procedure Code, it has been held by the Supreme Court that the High Court may exercise the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. In that case it was contended that Mr. Justice Khosla (Punjab High Court) had no jurisdiction under Article 226 to review his own order and that, therefore, the second order made by him was without jurisdiction. In that context the Supreme Court observed as follows:

It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a 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 committed by it.

The first order which Mr. Justice Khosla had made affected the interests of the persons who were not parties to the proceedings before him. He, therefore, entertained the review petition and corrected the error which he had made. This decision makes it clear that a Court has inherent jurisdiction u/s 151 of the CPC to correct an error made by it and to review its earlier order for that purpose and that there is nothing in Article 226 which militates against the exercise of such I inherent power. In light of the above decision, the question which arises is this:

4. Have I committed any error in making the order under review? The State Government did not produce all evidence before me and led me to commit an error of which now they complain. If they led me to commit an error of which now they complain, it is difficult for me to say that I committed an error. There is no doubt about the fact that it was the State Government which on account of their negligence and indifference led me to write a judgment which I did. A court of law deals with such evidence as is produced before it and pronounces its opinion thereon. It is extremely difficult for me to take the view that if some evidence has not been produced and if, therefore, a judgment suffers from an infirmity it can be a good ground for exercising inherent power of the Court to review that judgment. If the Court has failed to deal with the point which is argued before it, it may form a ground for exercising the inherent power of the Court to review its own judgment. In *Bank of Bihar Ltd. Vs. Mahabir Lal and Others*, a similar view has been taken by the Supreme Court.

5. In my opinion, therefore, the present petition for review is not maintainable under Rule 1, Order 47 nor is it a case for exercise of the Court's inherent power

to review its decision. The review application, therefore, fails and is dismissed, Rule is discharged with costs.