
(2013) 03 GAU CK 0062
In the Gauhati High Court
Case No : Rev. Pet No. 3 of 2013

State of Tripura and Others

APPELLANT

Vs

Shyam Lal Das

RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Citation : (2013) 3 GLD 168 : (2013) 5 GLT 408

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : S. Chakraborty, for the Appellant; D. Bhattacharjee, for the Respondent

Judgement

Utpalendu Bikas Saha, J.—Heard Mr. S. Chakraborty, learned counsel appearing for the State review petitioners as well as Mr. D. Bhattacharjee, learned counsel appearing for the sole respondent. This review application is filed by the petitioners for reviewing the judgment and order passed by this Court on 02.06.2012 in Writ Appeal No. 19 of 2012, whereby and where under this Court dismissed the writ appeal preferred by the State of Tripura challenging the order of the learned Single Judge dated 16.11.2011 passed in CM Application No. 428 of 2011, arising out of WP(C) No. 235 of 2010, wherein the learned Single judge rejected the prayer for extension of time limit fixed in the order of disposing of the writ petition as the same had already been expired.

2. Mr. Chakraborty while urging for reviewing our earlier order dated 02.06.2012, passed in Writ Appeal No. 19 of 2012 would contend that the delay alone, in such a case, should not be held to be fatal in the matter of continuing the departmental proceeding and thus, not expedient in the interest of justice for dismissing the prayer for extension of time on the ground that the same has become infructuous. He further submits that the learned Single Judge has not rejected the prayer for extension of time on the ground that the State has approached the Court after expiry of the time limit fixed in the order while disposing of the Writ petition and subsequent time extension prayer to conclude

the departmental proceeding. But the same was rejected on the ground that the period for extension, as sought for, has expired and the application for extension of time has become infructuous.

3. Mr. Bhattacharjee, learned counsel, appearing for the writ petitioner-respondent while countering the submission of learned counsel, Mr. Chakraborty submits that the instant review petition is not maintainable at all as in the whole petition, the review petitioners did not mention any ground regarding the order which is to be reviewed. He further submits that the whole contention in the instant review petition is relating to the order passed by the learned Single Judge not against the order which is to be reviewed. He finally contends that the scope of an application for review is much more restricted than that of an appeal and an application for review can only be allowed on 3(three) specified grounds namely:--

(i) Discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the order was passed;

(ii) Mistake or error apparent on the face of the record; or

(iii) For any other sufficient reasons.

4. But in the instant case none of the aforesaid grounds was mentioned in the review petition and even not pointed out what error or mistake was committed by this Court while passing the order which is to be reviewed. In *Parsion Devi and Others Vs. Sumitri Devi and Others*, the Apex Court while considering the provisions of Order XI, VII, Rule 1 and Section 114 of the CPC has considered the scope of the review jurisdiction of a Court and noted that "under Order XLVII, Rule 1, CPC a judgment may be opened to review inter alia if there is a mistake or error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order XLVII, Rule 1, CPC. In exercise of jurisdiction under Order XLVII, Rule 1, CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

5. In the above decision, the Apex Court also noted that there is a clear distinction between an erroneous decision and an error apparent on the face of the record, While the first can corrected by the higher forum, the latter only can be corrected by-exercise of the review jurisdiction.

6. While we dismissed the appeal preferred against the order of the learned Single Judge, we have given sufficient reasons for dismissing the appeal, which would be evident in 16 of the judgment and order dated 02.06.2012, which is as follows:--

16. We have given our anxious thought to the submission of the learned counsel

of the parties and also have gone through the impugned order passed by the learned Single Judge. Granting of time is nothing but a discretionary power of the Court and if the Court exercises such power judicially, even exercise of such discretion is erroneous but not illegal, then also the appellate Court cannot interfere with such order of the learned Single judge unless it is totally perverted and violative of the provisions of law. Admission of a Writ appeal is not a matter of right, like Civil First Appeal or Criminal Appeal, only when a prima facie case is made out for examining the judgment and order of the learned Single Judge, then only the Court should admit the appeal for hearing as the writ appeal is an in-house appeal. At the time of admission of the appeal, the appellate Court should be more cautious to examine the prima facie of the appeal and when there is no prima facie merit in an appeal, the Court should avoid admitting the same. In the instant case, we are of the firm opinion that the learned Single Judge did not commit any wrong while passing the impugned order as the State appellants filed the application for extension of time after expiry of two months time granted to them on earlier occasion.

7. A statement in a judgment that a particular thing happened or did not happen before the Court or the Court pass an order considering certain points and not considering other points cannot be a ground for review that can at best be the ground for preferring appeal and by this time, it is settled that a Review Court jurisdiction is very limited where under a Court of Appeal has wide power to consider and re-take the wrong committed by the Subordinate Courts and we are also in agreement with the submission of Mr. Bhattacharjee that in the review petition, the State review petitioner did not mention any ground showing that there are apparent errors in our earlier order.

8. We are of the opinion that the petitioners have failed to show the mistakes committed by this Court at the time of passing the order to be reviewed or the error apparent on the face of the said order and not only that the petitioners also did not show any other sufficient reasons for which the order has to be reviewed. In *Moran Mar Basselios Catholicos and Another Vs. The Most Rev. Mar Poulouse Athanasius and Others*, the Apex Court while approving the decision of the Privy Council in (1922) ILR 3 LAH 127 (Privy Council) considered the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule". It is also stated that there is a clear distinction between an erroneous decision and an error apparent on the face of the record. As we have already stated that while the first can be corrected by the higher forum and the latter only can be corrected by exercise of the review jurisdiction. Even if we consider the points raised by Mr. Chakraborty are correct, then also according to us, the same cannot be considered as error apparent on the face of the record. We have considered the submissions of the learned counsel for the parties and also have revisited to the judgment and order passed by us on 02.06.2012 in WA 19 of 2012. According to us, even a prima facie case does not make out for admitting the review petition, the same deserves dismissal.

In the result, the review petition stands dismissed.