
(1998) 07 KAR CK 0060

In the Karnataka High Court

Case No : Civil Revision Petition No. 468 of 1994

The Assistant Commissioner, Belgaum Sub-Division, Belgaum

APPELLANT

Vs

Ningappa Siddappa Arashavi

RESPONDENT

Date of Decision : 06-07-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 115, 151, 152
Land Acquisition Act, 1894 — Section 28

Citation : (1999) 2 KarLJ 134

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri M.H. Ibrahim, Government Pleader, for the Appellant;

Judgement

1. Heard the learned Government Pleader Sri M.H. Ibrahim.
2. This revision u/s 115 of the CPC arises from the judgment and order dated 23-9-1993 passed by Sri C.G. Hungund, Principal Civil Judge, Chikodi rejecting the application moved by the Assistant Commissioner L.A. under Order 47, Rule 1 read with Sections 151 and 152 of the CPC for the review of judgment and award/decreed dated 27-6-1991 in LAC No. 110 of 1988. The review petitioner (SLAO) sought an order to disallow the enhanced interest @ 9% for one year and 15% for subsequent years from the date of decree in LAC u/s 28 of the Land Acquisition Act.
3. The learned Counsel for the applicant has contended that the learned Civil Court committed jurisdictional error in rejecting the application under Order 47 of the Code by erroneously taking the view that "excess amount" meant enhanced compensation and by opining that the interest at the rate of 9% and 15% was payable on the entire enhanced amount of compensation and not on the difference between the compensation awarded by the Land Acquisition Officer and that awarded by the Court. Learned Counsel contended that the Court erred in opining that excess amount refers to enhanced compensation. Learned Civil Judge has taken that view at the time when it passed the decree

awarding 9% interest p.a. for a period of one year from the date of decree and thereafter from the date of dispossession @ 15% p.a. till the date of payment or deposit the amount of compensation in Court. One view had, no doubt, been taken by the learned Civil Judge that respective rates of interest provided at 9% and 15% shall be applicable to enhanced compensation and interests were chargeable on that amount. I do not wish to express any view if the Court below was right or wrong in awarding interest @ 9% or 15% respectively on entire amount of compensation. But even if there be possibility of another view that is the one as urged by the learned Counsel for the applicant. The possibility of two views does not make out a case of error apparent on the face of record. No authority deciding on the point has been placed before the Court which may be said to be finally decided, the question earlier than the order sought to be reviewed or later in which authoritative pronouncement has been given by this Court or by the Supreme Court which may be said to have been ignored by the learned Civil Judge. Further, it may be a case of error of law or fact, but a simple error or erroneous construction or erroneous decision may not amount to an error apparent on the face of record. In the case of Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, represented by the Deputy Commissioner of Commercial Taxes, Ananthpur, their Lordships of the Supreme Court have dealt with the expression "error apparent on face of the record" and the scope of the review. Their Lordships observed,

"Even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out".

That "their Lordship of Supreme Court has reiterated the view at times again in the cases -- Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, and in the case of Parsion Devi and Others Vs. Sumitri Devi and Others, . In this view of the matter, in my opinion, there was not a case of error apparent on record even if the decision dated 27-6-1991 on this point might have been erroneous. The Civil Judge has also rightly opined that there is no case of error apparent on the face of the record. As there been no case of error apparent on the face of record, review application was not maintainable and in rejecting or dismissing the Court below acted according to law. The order dated 23-9-1993 does not suffer from any jurisdictional error within the four corners of Section 115 of the Code of Civil Procedure. No doubt, it was open to the authority to file an appeal and get it

corrected.

4. Thus considered in my opinion, there is no failure to exercise jurisdiction on the part of the Civil Court, nor has it committed any jurisdictional error in dismissing the review application. The decision even if erroneous in the matter of awarding of 9% or 15% on entire enhanced amount that may be challenged by or may be made subject-matter of only appeal. The revision application with these observations is, hereby dismissed.