

(2014) 06 CAL CK 0064

In the Calcutta High Court

Case No : A.C.O. No. 126 of 2013 with A.P.O. No. 347 of 1996, A.C.O. No. 155 of 2013, A.C.O. No. 163 of 2013 and A.C.O. No. 127 of 2013 with A.P.O. No. 346 of 1996, A.C.O. No. 156 of 2013 and A.C.O. No. 162 of 2013

The Peerless General Finance and Investment Company Limited

APPELLANT

Vs

Bhagwati Developers Private Limited

RESPONDENT

Date of Decision : 19-06-2014

Acts Referred:

Companies Act, 1956 — Section 397, 398
Constitution of India, 1950 — Article 226

Citation : (2014) 3 CALLT 630 : (2014) 4 CHN 255 : (2015) 124 CLA 173 : (2014) 185 CompCas 36 : (2014) 4 CoMPLJ 308 : (2015) 1 WBLR 230

Hon'ble Judges : Shubhro Kamal Mukherjee, J;M.K. Chaudhuri, J

Bench : Division Bench

Advocate : Bhaskar Prasad Gupta, Mr. A. Chatterjee, Mr. T. Nag Chowdhury, Mr. A. Basu and Mr. Saktinath Mukherjee, Mr. Lakshmi Kumar Gupta and Mr. S. Banerjee in A.C.O. nos. 162 and 163 of 2013, Advocate for the Appellant; S.K. Kapoor, Mr. Jishnu Saha, Mr. Ravi Kapoor, Mr. R.K. Jhunjhunwala, Ms. Alpona Chowdhury, Mr. S. Rudra, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Subhro Kamal Mukherjee, J.—These are two applications for review of the judgment and order dated June 10, 2013 passed by a Division Bench of this Court comprising of Ashim Kumar Banerjee and Dr. Mrinal Kanti Chaudhuri, JJ.

2. The Peerless General Finance and Investment Company Limited (in short, Peerless) and Mr. Sunil Kanti Roy as the applicants filed these review applications.

3. On May 30, 1991 Chatterjee brothers, namely, Asis Kusum Chatterjee and Asit Kumar Chatterjee, filed a petition under Sections 397 and 398 of the Companies Act, 1956 (hereinafter referred to as "the said Act of 1956"), which was registered as Company Petition No. 222 of 1991. In the said petition, Peerless

was the principal respondent.

4. However, along with the said petition two consent letters were filed-one letter was by Mr. R.L. Gaggar and the other was by Bhagwati Developers Private Limited (in short, Bhagwati). They were not parties to the said company petition, but they accorded their consent to the prayers made by the said Chatterjee brothers. The letters of consent submitted by Mr. R.L. Gaggar, was not signed by Mr. R.L. Gaggar himself, but by his constituted attorney.

5. On or about June 8, 1991, Peerless filed an application challenging maintainability of the said Company Petition no. 222 of 1991 filed by the said Chatterjee brothers.

6. The main contentions of Peerless were that the Chatterjee brothers did not have the requisite shareholdings to maintain an application under Sections 397 and 398 of the said Act of 1956 and that the consents accorded by Mr. R.L. Gaggar and Bhagwati were invalid in law.

7. By judgment and order dated January 14, 1992, the Hon"ble Single Judge, inter alia, held that the said Company Petition no. 222 of 1991 was not maintainable. Consequently, the Company Petition no. 222 of 1991 was dismissed.

8. The Chatterjee brothers preferred two appeals. Appeal no. 35 of 1992 was against the order holding, inter alia, that the Company Petition was not maintainable and Appeal no. 40 of 1992 was against the order rejecting the application under Sections 397 and 398 of the said Act of 1956 filed by the Chatterjee brothers.

9. On November 16, 1993, the said Appeal no. 35 of 1992 was dismissed as withdrawn. On November 18, 1993, the other appeal being Appeal no. 40 of 1992 was, also, dismissed as withdrawn.

10. On December 22, 1993, Bhagwati applied for recalling of those orders and for its transposition in those appeals as the appellants.

11. By judgment and order dated February 2, 1995 the Division Bench dismissed the said applications of Bhagwati.

12. Bhagwati took the matter to the Supreme Court of India by filing Special Leave Petitions. The Supreme Court of India, by judgment and order dated April 26, 1996, disposed of the said Special Leave Petitions, inter alia, by granting liberty to Bhagwati to file independent appeals against the judgment and order passed by the Hon"ble Single Judge in Company Petition no. 222 of 1991. Peerless was precluded from raising the grounds of delay and maintainability. Nevertheless, Peerless was allowed to contend that the petition under Sections 397 and 398 of the Companies Act, 1956 were not maintainable as the Chatterjee brothers had withdrawn the appeals.

13. Sometime in May, 1996, Bhagwati filed two appeals, which were registered

as A.P.O. no. 346 of 1996 and A.P.O. no. 347 of 1996.

14. A Division Bench of this Court on November 24, 2003, disposed of aforesaid appeals holding, inter alia, that as the original application under Sections 397 and 398 of the said Act was not maintainable, the appeals were, also, not maintainable.

15. Bhagwati again went to Supreme Court of India with applications for Special Leave to appeal. The leave was granted and the matters were registered as Civil Appeal nos. 361 and 362 of 2005.

16. By judgment and order dated April 4, 2013, the Supreme Court of India directed this Court to rehear both the said appeals on merits.

17. The Division Bench disposed of the said appeals, by judgment and order dated June 10, 2013, inter alia, allowing the prayers of Bhagwati to get transposed and/or substituted in the place of the Chatterjee brothers in the proceeding and, also, accorded permission to the Bhagwati to proceed with the application under Sections 397 and 398 of the Companies Act, 1956. The parties were granted liberty to bring on record the subsequent events, if they were so advised.

18. There were four Special Leave Petitions in the Supreme Court of India. Two SLP nos. 20292-20293 of 2013 are by Peerless and SLP nos. 20114-20115 of 2013 are by Bhagwati.

19. The Supreme Court of India, by judgment and order dated July 5, 2013, dismissed the Special Leave Petitions with the observations that it would be open to the petitioners to file review petitions before the High Court.

20. Pursuant to the liberty granted by the Supreme Court of India these applications for review have been filed.

21. There are two other applications being A.C.O. nos. 162-163 of 2013 filed by Ms. Kajal Chatterjee, widow of Asis Kusum Chatterjee. Asis Kusum Chatterjee was one of the original applicants in the application under Sections 397 and 398 of the said Act of 1956.

22. It is contended that Asis Kusum Chatterjee died on April 12, 2013, that is, before the commencement of hearing of the appeals. The hearing of the appeals before the Division Bench commenced on May 7, 2013 and, as indicated hereinabove, the judgment was pronounced on June 10, 2013.

23. It is submitted that being the heir and legal representative of Asis Kusum Chatterjee, Ms. Kajal Chatterjee, widow of Asis Kusum Chatterjee, was entitled to contest the prayer for transposition. As she was not substituted, she lost the opportunity for the same.

24. Therefore, it was prayed that the death of Asis Kusum Chatterjee be recorded in A.C.O. no. 127 of 2013 and the judgment and order dated June 10,

2013 be declared as nullity.

25. Mr. Bhaskar Prasad Gupta, learned senior advocate appearing in support of the applications for review, mainly, contended that the share transfer forms in respect of 5,600 (five thousand six hundred) shares of Mr. R.L. Gaggar having been held to be invalid by a judgment and order dated July 23, 2012 by the Hon"ble Single Judge of this Court in an application under Article 226 of the Constitution of India, which was registered as W.P. No. 20586(w) of 2008, the said shares could not be counted for the purpose of determining the fulfillment of share qualification for maintaining the Company Appeal no. 222 of 1991 under Sections 397 and 398 of the said Act of 1956. The appellant, that is, the respondent in these applications for review, therefore, could not exercise any right as the beneficial owner in respect of the said 5,600 (five thousand six hundred) shares of Mr. R.L. Gaggar.

26. It is submitted that although such point was argued, the said issue was never noticed nor adverted to or decided by the Division Bench of this Court while delivering the judgment and order under review.

27. Mr. Saktinath Mukherji, learned senior advocate appearing for the applicant in A.C.O. nos. 162-163 of 2013, adopted the argument of Mr. Bhaskar Prasad Gupta, learned senior advocate in the applications for review. He, further, submitted that any transfer could not be effected without following the procedures prescribed under the law. Mr. Mukherji, further, submits that when Asis Kusum Chatterjee died before the hearing of the appeal, the judgment was a nullity and the only course open is to recall the judgment and to direct the appellants to take steps for substitution of the heir and legal representatives of the said Asis Kusum Chatterjee.

28. It was strenuously argued that the judgment of the Hon"ble Single Judge in the said application under Article 226 of the Constitution of India was brought to the notice of the Division Bench, but that was not considered.

29. Mr. S.K. Kapoor, learned senior advocate appearing on behalf of Bhagwati, however, did not dispute that the judgment of the Hon"ble Single Judge in W.P. No. 20586(w) of 2008 was cited before the Division Bench, but he submitted that the aforementioned judgment was irrelevant inasmuch as Bhagwati had, also, been holding a power of attorney from Mr. R.L. Gaggar. Therefore, the Division Bench, while delivering the judgment under review, did not refer to the order of the Hon"ble Single Judge.

30. Mr. Kapoor, further, informed us that an appeal has been presented against the order of the Hon"ble Single Judge dated July 23, 2012 in W.P. No. 20586(w) of 2008 together with an application for condonation of delay in filing the appeal. The said application for condonation of delay is, however, pending before the Division Bench.

31. Firstly, we deal with the applications filed under A.C.O. Nos. 162-163 of

2013. We are of the considered opinion that these are mischievous applications to stall the hearing of the company petition. The affidavits in support of such applications were affirmed in by Asit Kumar Chatterjee. Asit Kumar Chatterjee was present all through before the Division Bench. But, he did not intimate that his sister-in-law was dead.

32. Moreover, Asis Kusum Chatterjee was represented by his learned advocate. The learned advocate did not discharge his duty as contemplated under Order 21, rule 10A of the Code of Civil Procedure. The learned advocate did not intimate the Court about the death of his client, Asis Kusum Chatterjee.

33. We are, therefore, of the opinion that the said abusive applications must be rejected.

34. We are of the opinion that when Mr. R.L. Gaggar executed a power of attorney in favour of Bhagwati in relation to the said 5,600 (five thousand six hundred) shares, whether the 5,600 (five thousand six hundred) shares of Mr. R.L. Gaggar were validly transferred or not, becomes irrelevant. Admittedly, Mr. R.L. Gaggar executed a letter of consent supporting the application under Sections 397 and 398 of the said Act of 1956.

35. The power to review is a restricted power, which authorises the Court or the tribunal, which passed the judgment sought to be reviewed, to look over through the judgment not in order to correct it or improve it because some material, which ought to have been considered, had escaped its consideration or failed to be placed before it by any other reason. The Court cannot under cover of it arrogate to itself the power to decide the case over again.

36. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise with a clear distinction between an erroneous decision and an error apparent on the face of record. A party is not entitled to seek a review of the Court's judgment merely for the purpose of rehearing and for a fresh decision of the case. Departure from the normal principle that the Court's judgment is final would be justified only when compelling or substantial circumstances make it necessary to do so. Krishna Iyer, J. in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, held:-"A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon."

37. In this case, the issue as to invalidity of the transfer of shares by Mr. R.L. Gaggar was irrelevant inasmuch as Mr. R.L. Gaggar had issued a letter of consent in support of the said Company Petition and Bhagwati holds a power of attorney from Mr. R.L. Gaggar.

38. Therefore, it could not be said that the Division Bench omitted to try a material issue in the case. Moreover, the judgment is based on grounds, which is sufficient to sustain it. There is no error apparent on the face of records. We do not find any merit in the applications for review.

39. Thus, the applications for review are dismissed.