
(2015) 07 MAD CK 0231

In the Madras High Court

Case No : Review Application (MD) No. 122 of 2010, M.P. (MD) Nos. 1, 2/2010, 1, 2/2011 and 1 of 2013

Thomas Kuruvilla

APPELLANT

Vs

Canara Bank and Others

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 40, Order 47 Rule 1, Order 47 Rule 47

Constitution of India, 1950 — Article 137, 145

Citation : (2015) 5 CTC 741 : (2015) 7 MLJ 138

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : K.V. Subramaniam, Senior Counsel for M.A. Abdul Wahab, for the Appellant

Final Decision : Allowed

Judgement

K.K. Sasidharan, J—This is an application to review the order dated 31 August, 2010 in C.R.P.(PD)(MD)No. 2488 of 2008, whereby and whereunder, this Court dismissed the Civil Revision Petition filed by the applicant.

SUMMARY OF FACTS:

2. The applicant availed financial assistance from Canara Bank, Dindigul Main Branch. Since the applicant failed to repay the loan amount, the bank initiated proceedings before the Debts Recovery Tribunal, Madurai. The Tribunal issued a Recovery Certificate on 18 September, 2000. The Recovery Officer, pursuant to the Recovery Certificate, attached the secured asset and put it for sale. The applicant moved the Debts Recovery Tribunal to stay the auction. The Tribunal granted interim stay, subject to the condition that the applicant should deposit a sum of Rs. 2,00,000/- and settle the matter with the bank. The applicant duly complied with the condition with regard to deposit. Even then, the property was auctioned on 25 April, 2008. The bid submitted by the third respondent was

accepted by the Recovery Officer.

3. The Debts Recovery Tribunal passed final orders on 18 December, 2008 holding that sale was validly conducted cannot be set aside, but however, on account of the settlement reached with the Bank and payment of more amount by the debtor, much more than the amount fetched in the public auction, the sale will be set aside in case full satisfaction is recorded within 15 days and interest at the rate of 12% on the sale amount is paid to the auction purchaser.

4. The applicant challenged the order dated 18 December, 2008, before this Court in C.R.P.(PD)(MD)No. 2488 of 2008. This Court dismissed the Civil Revision Petition with an observation that it was only to enable the applicant herein to save his property, the Recovery Officer has shown concession to pay one time settlement amount of Rs. 25,00,000/- and payment of 12 % interest to the auction purchaser.

5. The applicant has come up with this Review Application primarily on the ground that this Court omitted to consider the basic fact that sale was conducted in violation of the stay granted by the Debts Recovery Tribunal and failed to address the issues raised by him on account of the delay in pronouncing orders.

SUBMISSIONS:

6. The learned Senior Counsel for the petitioner contended that the Civil Revision Petition was filed against the order dated 18 December, 2008 on the file of Debts Recovery Tribunal, Madurai. The applicant has taken up a specific contention that the sale was made in violation of the interim order dated 31 March, 2008. The learned Senior Counsel contended that the matter was argued on merits and judgment was reserved on 10 November, 2009. This Court dismissed the Civil Revision Petition, by order dated 31 August, 2010. The learned Judge failed to address the issue raised by the applicant to the effect that the sale was made in violation of the interim order passed by the Debts Recovery Tribunal and as such, the very auction is bad in law. The learned Senior Counsel further contended that the applicant settled the matter with the bank and paid the entire one time settlement amount of Rs. 25,00,000/-. Though the applicant has produced documents to substantiate the subsequent settlement and payment of the entire one time settlement amount, it was not taken note of by the learned Judge, while dismissing the Civil Revision Petition.

7. The learned counsel for the third respondent submitted that the property was sold in public auction and the auction purchaser deposited the entire amount. There is no question of settlement thereafter between the creditor and debtor. The learned counsel contended that the bank colluded with the applicant and settled the matter behind the back of auction purchaser. According to the learned counsel, the auction purchaser deposited the entire sale amount and as such, he is entitled to a sale Certificate. It was further contended that none of the grounds raised by the applicant would justify the exercise of review jurisdiction.

DISCUSSION:

8. The first respondent initiated proceedings before the Debts Recovery Tribunal, Madurai, in D.R.C. No. 303 of 2001 to recover the loan amount paid to the applicant. The Tribunal, after contest, issued a Recovery Certificate dated 18 September, 2000, in D.R.C. No. 250 of 2000 for recovering of a sum of Rs. 38,32,784/- with subsequent interest.

9. The Recovery Officer initiated proceedings to execute the Recovery Certificate. The property owned by the applicant was attached by the Recovery Officer. The Recovery Officer issued a notification fixing the auction on 31 March, 2008.

10. The applicant moved the Debts Recovery Tribunal, immediately after the publication of sale notice. The application in I.A. No. 1101 of 2008, which was the subject matter of Civil Revision Petition in C.R.P.(PD)(MD)No. 2488 of 2008, was heard on 31 March, 2008. The Debts Recovery Tribunal, after hearing the counsel for the applicant and the bank, stayed the sale, subject to the following conditions:

"(a) The defendant has to pay Rs. 2,00,000/- on or before 10.04.2008.

(b) The defendant settles the matter on or before 25.04.2008."

11. The order dated 31 March, 2008 contain a reference about the mandatory condition. It reads thus:

"If the applicant fails to comply with the aforesaid condition No. (a), the sale would be conducted on 25 April, 2008."

12. The condition No. (a) relates to the deposit of Rs. 2,00,000/-. Even though there was another condition to settle the matter on or before 25 April, 2008, the said condition was not treated as a mandatory one for postponement of sale.

13. The applicant deposited Rs. 2,00,000/- on 10 April, 2008 and thereby, complied with the mandatory condition.

14. The factual matrix indicates that in spite of complying with the condition, the Recovery Officer conducted auction on 25 April, 2008.

15. The third respondent was declared as the successful bidder. The third respondent deposited a sum of Rs.3,90,000/- on 25 April, 2008. Another sum of Rs. 9,80,700/- was deposited on 08 May, 2008.

16. The applicant, having found that in spite of complying with the condition prescribed by the Debts Recovery Tribunal for stay of auction, the property was auctioned on 25 April, 2008, rushed to the Debts Recovery Tribunal, complaining that the sale was in violation of the interim order. In the meantime, the third respondent filed an application in I.A. No. 662 of 2008 on 08 July, 2008, to confirm the sale.

17. The auction purchaser filed W.P.(MD)No. 6790 of 2008 to direct the Debts

Recovery Tribunal to confirm the sale. The High Court, by order dated 21 October, 2008, directed the Debts Recovery Tribunal, to take a decision within one month.

18. While so, the bank settled the matter with the applicant. The applicant agreed to pay a sum of Rs. 25,00,000/- in full and final satisfaction of the claim. The applicant deposited a sum of Rs. 5,00,000/- on 10 September, 2008 and requested the Tribunal to transfer Rs. 5,00,000/- already deposited by him, to the bank.

19. The Debts Recovery Tribunal passed an order on 18 December, 2008, directing the applicant to pay one time settlement amount within fifteen days and pay interest at the rate of 12% to the auction purchaser. It was only the said order which was challenged in Civil Revision Petition in C.R.P.(PD)(MD)No. 2488 of 2008 before this Court. Subsequent to the filing of Civil Revision Petition, the applicant deposited a sum of Rs. 15,00,000/- and requested the bank to adjust Rs. 5,00,000/- already in deposit.

20. The primary question is as to whether the applicant has made out a case to review the order in C.R.P.(PD)(MD)No. 2488 of 2008.

THE STATUTE:

21. Order 47 Rule 1 of Code of Civil Procedure provides for review of the judgment. Rule 1 of Order 47 reads thus:

"1. Application for review of judgment.-

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

22. Order 47 permits the aggrieved to file a review on account of discovery of new and important matter or evidence which was not within his knowledge, in spite of due diligence. It also provides for review on account of some mistake or error apparent on the face of the record. The third ground permits the aggrieved to file a review "for any other sufficient reason".

23. There is no definition for the term "for any other sufficient reason". The Court has to consider the grounds raised by the applicant to decide as to whether those reasons would constitute "sufficient reason" for the purpose of exercising review jurisdiction.

24. The applicant has taken up a specific contention in this Revision Petition that the issue regarding the sale conducted on 25 April, 2008, in violation of the interim order granted by the Debts Recovery Tribunal, was highlighted in the Civil Revision Petition. The said issue was argued by the learned Senior Counsel during the course of hearing. Similarly, the applicant has produced documents in C.R.P.(PD)(MD)No. 2488 of 2008 to substantiate his claim that subsequent to the initiation of Civil Revision Petition, the entire one time settlement amount was paid to the bank. The applicant has, therefore, taken up a contention that none of the substantial grounds raised in the Civil Revision Petition nor the documents produced before the Court were taken into consideration while dismissing the Civil Revision Petition.

25. The applicant has furnished the relevant dates and events regarding the date of final hearing and the date of disposal of the Civil Revision Petition in support of his argument that the delay in pronouncing the orders after reserving the matter would constitute a sufficient cause to file Review Application. The learned Senior Counsel for the petitioner, though not expressly stated, indicated that the long delay in pronouncing the order was the reason for the failure to answer the issues raised by the applicant regarding illegal sale and payment of the entire one time settlement amount.

26. The documents available on record would show that the Civil Revision Petition was argued finally on 10 November, 2009. This Court, after hearing the arguments, reserved for orders.

27. The Civil Revision Petition was dismissed, by order dated 31 August, 2010.

28. The dates mentioned above would make it clear that the order was passed nine months after reserving the Revision Petition for orders.

29. The core issue is as to whether the delay in pronouncing the order and failure to answer the issue raised by a party and non- consideration of documents produced would constitute "sufficient reason" within the meaning of Rule 1 of Order 47 of Code of Civil Procedure to enable him to file a Review Application.

30. The applicant has taken up a specific contention that the auction sale was made in violation of the interim order passed by the Debts Recovery Tribunal. The applicant has also produced materials to show that he has complied with the mandatory condition prescribed by the Debts Recovery Tribunal for staying the auction. The typed-set of papers in C.R.P.(PD)(MD)No. 2488 of 2008 contain the documents relating to the full payment made to the bank towards one time settlement. The learned Senior Counsel for the applicant vehemently contended that the illegal sale made on 25 April, 2008 and the subsequent events were all

highlighted before this Court and in spite of such submissions, the Civil Revision Petition was dismissed without adverting to the contentions.

31. The order passed by this Court dated 31 August, 2010 proceeds as if the applicant has deposited a sum of Rs.5,00,000/- only towards one time settlement. This Court has not addressed specifically the issue regarding the illegal sale though it was the sheet anchor of the case of applicant. This Court considered only the final direction given by the Debts Recovery Tribunal and there was no attempt made to decide as to whether the sale conducted on 25 April, 2008 was in violation of the interim order.

32. The Supreme Court in *R.C. Sharma Vs. Union of India (UOI) and Others*, AIR 1976 SC 2037 : (1976) 3 SCC 574 : (1976) SCR 580 Supp : (1976) 1 SLJ 516 : (1976) 8 UJ 576 indicated that in case of delay in delivering judgment after conclusion of arguments, there is a chance of escaping important points from notice. The Supreme Court said:

"12. Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. Justice, as we have often observed, must not only be done but must manifestly appear to be done."

33. It is appropriate to quote the following observation of the Supreme Court in *Anil Rai Vs. State of Bihar*, (2001) 6 JT 515 :

"9. It is true, that for the High Courts, no period for pronouncement of judgment is contemplated either under the Civil Procedure Code or the Criminal Procedure Code, but as the pronouncement of the judgment is a part of the justice dispensation system, it has to be without delay. In a country like ours where people consider the Judges only second to God, efforts be made to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eyebrows, sometimes genuinely which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the rule of law. For the fault of a few, the glorious and glittering name of the judiciary cannot be permitted to be made ugly. It is the policy and purpose of law, to have speedy justice for which efforts are required to be made to come up to the expectation of the society of ensuring speedy, untainted and unpolluted justice."

42..... Judges themselves normally forget the details of the facts and niceties of the legal points advanced. Sometimes the interval is so long that the Judges forget even the fact that such a case is pending with them expecting

judicial verdict. Though it is an unpleasant fact, it is a stark reality."

34. In view of the judgment of Supreme Court in *Anil Rai Vs. State of Bihar*, (2001) 6 JT 515 , I hold that in case reserved judgment was not pronounced, within a reasonable time from the date of conclusion of arguments and the parties have come up with a grievance and demonstrated that the basic issues raised before the Court were omitted to be considered on account of the long interval, the same would constitute "sufficient reason" within the meaning of Order 47 Rule 1 of Code of Civil Procedure, enabling the aggrieved to file a Review Application.

35. The Supreme Court in *S. Nagaraj and Others Vs. State of Karnataka and Another*, (1993) 4 JT 27 : (1994) 1 LLJ 851 : (1993) 3 SCALE 548 : (1993) 4 SCC 595 Supp : (1993) 2 SCR 1 Supp : (1994) 1 SLJ 61 indicated that the order passed by the Court under a mistake can be recalled to avoid injustice. The Supreme Court said:

"Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, "for any other sufficient reason" in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power....."

36. The Supreme Court in *Lily Thomas, Vs. Union of India and Others*, AIR 2000 SC 1650 : (2000) CriLJ 2433 : (2000) 2 DMC 1 : (2000) 5 JT 617 : (2000) 4 SCALE 176 : (2000) 6 SCC 224 : (2000) 2 UJ 1113 : (2000) AIRSCW 1760 : (2000) 3 Supreme 601 observed that law has to bend before justice. The Supreme Court said:

"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* 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."

37. The Supreme Court in Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, AIR 2005 SC 592 : (2005) 1 JT 235 : (2005) 4 SCC 741 : (2005) 1 SCR 173 : (2005) 1 UJ 334 indicated the scope of review jurisdiction under Order 47 Rule 1 of Code of Civil Procedure. The Supreme Court said:

"89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

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 therefore. 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".

38. The Supreme Court in Rajender Singh Vs. Lt. Governor, Andaman and Nicobar Islands and Others, AIR 2006 SC 75 : (2005) 5 CTC 487 : (2005) 107 FLR 1069 : (2005) 12 JT 109 : (2006) 1 LLJ 458 : (2005) 13 SCC 289 : (2006) SCC(L&S) 1057 : (2005) 3 SCR 1042 Supp : (2006) 1 SLJ 507 : (2005) AIRSCW 5486 : (2005) 7 Supreme 3 observed that the review jurisdiction is intended to correct errors to prevent miscarriage of justice. The Supreme Court said:

"10. The power, in our opinion, extends to correct all errors to prevent miscarriage of justice. The courts should not hesitate to review its own earlier order when there exists an error on the face of the record and the interest of the justice so demands in appropriate cases. The grievance of the appellant is that though several vital issues were raised and documents placed, the High Court has not considered the same in its review jurisdiction. In our opinion, the High Court's order in the review petition is not correct which really necessitates our interference."

39. The factual matrix very clearly shows that in spite of compliance of the mandatory condition by the applicant, pursuant to the order dated 31 March, 2008, the property was sold in public auction. While passing subsequent orders, the Debts Recovery Tribunal proceeded as if only in case both the conditions were complied with by the applicant, the sale would be postponed. The Debts

Recovery Tribunal failed to consider its own order in its true spirit. The essential requirement was only to pay the amount. The second requirement regarding settlement with the bank was not indicated as a primary condition to stay the auction. This vital contention though raised in the Civil Revision Petition, was not answered by this Court.

40. The applicant has settled the matter with the bank. The bank is dealing with public money. The third respondent purchased the property for a sum of Rs. 13,00,000/-. In view of the settlement, the bank succeeded in recovering a sum of Rs.25,00,000/-. The payment of the entire one time settlement amount after filing the Civil Revision Petition was omitted to be considered by this Court, notwithstanding production of documents relating to payment made by the applicant.

41. When it is made out that the sale was in violation of the order passed by the Debts Recovery Tribunal, any order passed subsequently and that too, without addressing the illegal sale conducted by the Recovery Officer would be a futile exercise. The applicant has already settled the matter with the bank. The bank has no claim against the applicant after settlement. This aspect was also not considered by this Court, while dismissing the Civil Revision Petition. I am, therefore, of the view that the applicant has made out a case for review.

42. In the result, the order dated 31 August, 2010, is reviewed. The sale conducted by the Recovery Officer on 25 April, 2008, in violation of the interim order granted by the Debts Recovery Tribunal, is set aside. The second respondent is directed to transfer the amount deposited by the applicant viz., Rs.5,00,000/- to the first respondent forthwith.

43. The third respondent, being the auction purchaser, deposited a sum of Rs. 3,90,000/- on 25 April, 2008 and Rs. 9,80,700/- on 08 May, 2008. Even though the sale was made in violation of the interim order, there is no question of punishing the auction purchaser. I am, therefore, of the view that the applicant should compensate the auction purchaser. The Debts Recovery Tribunal has already directed the applicant to pay interest at the rate of 12% to the third respondent. The third respondent, having invested considerable amount in 2008, must be given reasonable interest.

44. The applicant is directed to pay interest at the rate of 9% to the third respondent, taking into account the deposit made by him on 25 April, 2008 and 08 May, 2008. There shall be a further direction to deposit the interest amount before the second respondent, within a period of eight weeks from the date of receipt of a copy of this order. The third respondent is given liberty to withdraw the amount so deposited.

45. In the upshot, I allow the Review Application. Consequently, the connected miscellaneous petitions are closed.