

**(2008) 06 CAL CK 0029**

**In the Calcutta High Court**

**Case No :** C.C. No. 405 of 1999, G.A. No. 2780 of 2000 and W.P. No. 4241 of 1991

W.H. Targett (India) Limited

APPELLANT

Vs

Mr. S. Ashraf and Others

RESPONDENT

**Date of Decision :** 04-06-2008

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114  
Companies Act, 1956 — Section 21, 23, 23(3)  
Constitution of India, 1950 — Article 226  
Contract Act, 1872 — Section 23  
Transfer of Property Act, 1882 — Section 5, 6  
Urban Land (Ceiling and Regulation) Act, 1976 — Section 27(2)

**Citation :** (2008) 3 CALLT 362

**Hon'ble Judges :** Subhro Kamal Mukherjee, J

**Bench :** Single Bench

**Advocate :** G.S. Asopa and Pooja Das Choudhury, in contempt application and N.C. Roy Chowdhury and S.S. Sarkar, for Contemnors, for the Appellant; G.S. Asopa and Pooja Das Choudhury, in review application, for the Respondent

**Final Decision :** Dismissed

## Judgement

Subhro Kamal Mukherjee, J.—An application for contempt and an application for review are considered analogously by consent of the parties.

2. The application for contempt is filed, inter alia, alleging willful and deliberate violation and disobedience of the order dated December 3, 1998 passed by Satya Brata Sinha, J. (as His Lordship then was) in Matter No. 4241 of 1991. The said application for contempt was filed on or about December 2, 1999.

3. An application seeking review and re-calling of the said order dated December 3, 1998, inter alia, directing mutation of the name of the writ petitioner in relation to the premises No. 145 Sundernagar, New Delhi, is filed by the respondents in the writ petition on or about July 5, 2000.

4. The relevant facts leading to filing of the said applications are summarised as under:

Under the instructions of the Government of India, relating to the disposal of building sites in the New Capital of Delhi, the Chief Commissioner of Delhi granted a perpetual lease on March 31, 1958 to Swadeshi Cotton Mills Limited, Kanpur, in a plot of land measuring about 0.179 acres being plot No. 145 in block No. 171 in the site acquired for erection of New Capital of Delhi.

5. The relevant clause for the purpose of deciding these applications runs as under:

2(13) The Lessee shall before any assignment or transfer of the said premises hereby demised or any part thereof obtain from the Lessor or the Chief Commissioner of Delhi or such officer or body as the Lessor may authorise in this behalf approval in writing of the said assignment or transfer and all such assignees and transferees and the heirs of the Lessee shall be bound by all the covenants and conditions herein contained and be answerable in all respects therefore.

Provided also that the Lessor shall be entitled to claim and recover a portion of the unearned increase (i.e. the difference between the premium already paid and current market value) in the value of land at the time of transfer (whether such transfer is an entire site or only a part thereof), the amount to be recovered being 50 per cent. of the unearned increase.

6. On or about September 8, 1965 the said Swadeshi Cotton Mills Limited conveyed the said plot of land to Jawaharlal Rakyan, a Hindu Undivided Family, comprising of Jawaharlal, Arun Kumar and Anil Kumar. Jawaharlal, as the karta of the said Hindu Undivided Family, applied for mutation in favour of the said Hindu Undivided Family. The property was mutated in the name of the said Hindu Undivided Family.

7. On September 10, 1983 Marble Trading Company Limited entered into an agreement for sale in relation to the said property with the said Hindu Undivided Family.

8. On or about January 9, 1985 Jawaharlal, as the karta of the said Hindu Undivided Family, applied under Sub-section (2) of Section 27 of the Urban Land (Ceiling and Regulation) Act, 1976, before the Competent Authority under the said Act. Such permission was granted by the Competent Authority on or about March 19, 1985.

9. On or about May 27, 1985 the said Jawaharlal, as the karta of the said Hindu Undivided Family, sought for permission to convey the said property to Marble Trading Company Limited. On or about November 20, 1985 such permission was granted.

10. On or about December 30, 1985 a sale deed was executed by Jawaharlal. as

the karta of the said Hindu Undivided Family, in favour of the Marble Trading Company Limited.

11. Accordingly, on November 6, 1986 the property was mutated in the name of the Marble Trading Company Limited.

12. In the meantime, however, on July 22, 1985 a special resolution was adopted to change the name of Marble Trading Company Limited to W. H. Targett (India) Limited. On July 29, 1985 the Central Government accorded permission to Marble Trading Company Limited to change its name to W.H. Targett (India) Limited, as required u/s 21 of the Companies Act, 1956. Consequently, on or about August 13, 1985, a fresh certificate of incorporation was granted to W. H. Targett (India) Limited upon change of name.

13. On or about November 26, 1986 W. H. Targett (India) Limited requested the Assistant Settlement Commissioner to make necessary change in the settlement records in respect of the said plot of land in view of change of name of the company from Marble Trading Company Limited to W. H. Targett (India) Limited.

14. On or about August 21, 1991 the Deputy Land and Development Officer wrote to W. H. Targett (India) Limited, inter alia, alleging that there has been a transfer of the property from Marble Trading Company Limited to W. H. Targett (India) Limited; such transfer has been illegal as it has been carried out without obtaining prior permission of the lessor and without paying the government dues. However, W.H. Targett (India) Limited was informed that the lessor would regularize such alleged unauthorised transactions provided certain terms and conditions be complied with.

15. Being aggrieved this application under Article 226 of the Constitution of India was moved before this Court, which was registered as Matter No. 4241 of 1991.

16. The respondents contested the writ application by filing an affidavit-in-opposition. The respondents in the said opposition, inter alia, contended as under:

...I repeat that there has been a wholesale change in the Board of Directors and Shareholders of Marble Trading Company Limited, and the writ petitioner. Had the respondents been informed about the alleged change of name the sale deed could not have been executed in favour of Marble Trading Company Limited, and no mutation could have been effected in favour of the Marble Trading Company Limited....

...I say that the petitioner intimated the alleged change of name after obtaining sale permission from the lessor in favour of the Marble Trading Company Limited, on 20th November, 1985 and after execution of the Sale "Deed on 30th December, 1985. It clearly indicates the malafide intention of the writ petitioner to effect payment of Government dues and to wriggle out of clause 2(13) of the said Lease Deed. Mutation in favour of Marble Trading Company Limited, also took place on 6th November, 1986. All these things took place after the alleged

change of name of the company on 13th August 1985. It clearly indicates that both M/s. Marble Trading Company Limited and the writ petitioner were functioning concurrently. It is not a case of change of name simpliciter it is the case of wholesale change in the Board of Directors and Shareholders and also Registered Office. Under these circumstances, prior permission of the Lessor and payment of 50% of the unearned increase is required under clause 2(13) of the Lease Deed....

...I say that consequent on the alleged change of name there has been a complete change in the Board of the writ petitioner and its members. There has been also a change of the Registered Office. If the corporate shall (shell?) is cracked upon a new company came into being. On a scrutiny of the documents furnished by the petitioner the respondents were of the considered opinion that it was a transfer of the property under the guise of change of name of the company. Accordingly, a notice was issued to the petitioner on 6th November, 1990. I say that mutation cannot be effected without payment of the Government dues indicated in the letter dated 21st August, 1991.

17. The said application under Article 226 of the Constitution of India came up for consideration before Satya Brata Sinha, J. (as His Lordship then was) and His Lordship by judgment and order dated December 3, 1998 allowed the writ petition with the following findings:

The Company is a juristic person and by reason of change of its name alone, it cannot be said that any transaction has taken place in respect of its assets or obligations when the earlier company ceased to exist upon grant of fresh certificate of incorporation consequent of change of name.

In Sulphur Dyes Ltd. v. Hickson and Dadajee Limited reported in 1996(83) CompCas 533 it has been held that the company which has changed its name would be entitled to ask those companies in which its holding shares to substitute a company in the name in the Register of Members in place of other name.

The same reasoning applies also in the instant case, inasmuch as the first petitioner has merely prayed for substitution of its name in place and stead of Marble Trading Co. Ltd.

For the reasons aforementioned this application is allowed. The impugned order dated 21.8.91 as contained in annexure Q page 52 of the writ application is quashed and the respondents are hereby directed to mutate the name of the first petitioner in its Register instead and placed of "Marble Trading Co. Ltd.

18. In spite of notice and knowledge of the said judgment and order dated December 3, 1998 the respondents have failed to act in terms of the said order. Therefore, the present application for contempt is filed, which is registered as C. C. No. 405 of 1999.

19. An application for review is filed by the respondents in the said application

under Article 226 of the Constitution of India, inter alia, seeking review and/or recalling of the said order dated December 3, 1998. The said application is registered as G. A. No. 2780 of 2000.

20. In the said application for review the respondents, inter alia, state that only on November 26, 1986 W. H. Targett (India) Limited, for the first time, informed the authorities that Marble Trading Company Limited has changed its name as W. H. Targett (India) Limited and sought for mutation of the said property in favour of the new company although the deed was executed by the said Hindu Undivided Family in favour of Marble Trading Company Limited on December 30, 1985; that Marble Trading Company Limited and W. H. Targett (India) Limited are two altogether separate legal entities inasmuch as there has been complete change of the directors and the shareholders: that the application for mutation is fraught with uncertainty, which was not brought to the attention of this Court at the time of passing the said order dated December 3, 1998; that the said two companies are in collusion and in conspiracy and improperly and illegally acting so as to defeat the very terms and conditions of the lease deed.

21. Mr. Roy Chowdhury, learned senior advocate, appearing in support of the application for review, argues that a fresh certificate of incorporation was issued on August 13, 1985. The Hindu Undivided Family obtained permission for conveying the disputed property on November 20, 1985. The deed of sale was executed in favour of Marble Trading Company Limited on December 30, 1985. The vendee applied for mutation in its favour on March 13, 1986 and obtained mutation on November 6, 1986. Mr. Roy Chowdhury, therefore, submits that this is not a case of change of name, but change of hands. Mr. Roy Chowdhury argues that as the name of the Marble Trading Company Limited was changed some time in August 1985, there was no bona fide reason or justification in obtaining the deed of conveyance in the name of Marble Trading Company Limited on December 30, 1985. Mr. Roy Chowdhury submits that as this is transfer of property from one juristic person to another, the vendor and the vendee ought to have complied with the provisions of clauses of the perpetual deed of lease, particularly the clause 2(13). as aforesaid. Mr. Roy Chowdhury submits that the Hon'ble Judge while allowing the writ petition did not consider such an important issue and non-consideration of the application of the provisions of Sections 5 and 6 of the Transfer of Property Act, 1882, are patent errors on the face of the records necessitating review of the judgment and order dated December 3, 1998.

22. Section 5 of the Transfer of Property Act, 1882, defines the term Transfer of Property".

Section 5 runs as under:

5. Transfer of property" defined. - In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, (or to himself) and one or

more other living persons; and "to transfer property" is to perform such act.

In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

23. Section 5 signifies that every possible interest, which a person can acquire, hold and enjoy are capable of transfer.

24. Mahood, J. in Gopal Pandey v. Parsotam Das reported in ILR 5 All 121 holds that the word "transfer" is used in law in the most signification, comprehending all species of contract, which pass real rights in the property to one person to another. The term cannot be defined better than by saying that it means an act by which a living person conveys the whole or part of the right of ownership of property; in present or in future, to one or more other living persons.

25. Section 6 of the Transfer of Property Act, 1882, runs as under:

6. What may be transferred. - Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force:

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred;

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby;

(c) An easement cannot be transferred apart from the dominant heritage;

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him;

(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred;

(e) A mere right to sue cannot be transferred;

(f) A public officer cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable;

(g) Stipends allowed to military, naval, air-force and civil pensioners of the Government and political pensions cannot be transferred;

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) on an unlawful object or consideration within the meaning of Section 23 of the Indian Contract Act, 1872 (9 of 1872), or (3) to a person legally disqualified to be transferee;

(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which

default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

26. Section 6 contemplates that the owner of a property may transfer it unless there are some legal restrictions to the contrary. First part of Section 6 provides that every kind of property is transferable unless such transfer is restricted by Transfer of Property Act, 1882, or any other law for the time being in force.

27. Under Sub-sections (a), (d), (f), (g) and (i) certain things are excluded from the category of property, which can be transferred. Sub-section (b) restricts transfer to a particular class of transferee. Sub-sections (c) and (e) deal with cases in which the rights cannot be transferred by themselves. Sub-section (h) is a general section covering most of the aforementioned exceptions.

28. The Supreme Court of India in the case of Parsion Devi and Others Vs. Sumitri Devi and Others, holds that under Order 47, Rule 1 of the CPC a judgment may be open to review, inter alia, if there is a mistake or an 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 47, Rule 1 of the Code of Civil Procedure. In exercise of the jurisdiction under Order 47, Rule 1 of the CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can only be corrected by the higher forum, the latter can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

29. In Haridas Das Vs. Smt. Usha Rani Banik and Others, the Supreme Court of India holds that Section 114 of the CPC does not even adumbrate the ambit of interference expected of the Court. The parameters are prescribed in Order 47 of the Code of Civil Procedure, which permit a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action, which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. That is amply evident from the explanation to Order 47, Rule 1.

30. It was not necessary to consider the applicability of the provisions of Sections 5 and 6 of the Transfer of Property Act, 1882, while deciding the writ petition. This is not a case of transfer of interest in property from one person to another. The property was purchased by Marble Trading Company Limited. The name of Marble Trading Company Limited was changed to W. H. Targett (India) Limited.

The property is still retained by the company, which was earlier known as Marble Trading Company Limited and presently is known as W. H. Targett (India) Limited. As this is not a case of transfer, the Hon'ble Judge, while considering the writ petition, had no occasion to consider the applicability of Sections 5 and 6 of the Transfer of Property Act, 1882.

31. On the contrary, u/s 21 of the Companies Act, 1956, change of name by a company is permissible. A company may, by special resolution and with the approval of the Central Government signified in writing, change its name.

32. Section 23 of the Companies Act, 1956, enumerates the effect of the change of name by a company. Sub-section (3) of Section 23 of the said Act contemplates that the change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it, and any legal proceedings, which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.

33. The company, in its former name, entered into an agreement for sale with the erstwhile lessee. Therefore, transaction commenced before the change of name by the company. The matter was pursued in government departments. The Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 and the government accorded permission to transfer of leasehold interest by the erstwhile lessee in favour of the company. In the meantime, the name of the company was changed by adopting a special resolution. The approval of the Central Government was accorded. The Registrar, also, issued a fresh certificate of incorporation recording the present name of the company. This is a case of mere change of name by an existing company. The company remains, for all practical purposes, the same entity with the same rights, privileges and liabilities as before. As the permission was accorded in favour of the company in its former name, the document was executed in favour of the company describing the company by its former name; this may, at best, be an irregularity. For such an alleged irregularity the transaction is not vitiated.

34. Satya Brata Sinha, J. while allowing the writ petition relied upon the decision in case of Sulphur Dyes Ltd. (supra). In the said decision it was held that, on change of its name, the company was entitled to mutation of its name in the Register of Members in the other company in which it was holding shares. No application would be required for rectification of the said register of members.

35. In application for review virtually the points taken in the affidavit-in-opposition are reiterated. The review of a judgement contemplates re-examination of the matter under certain specified and prescribed circumstances. The scope of review is very restricted. An application for review is maintainable when the applicant establishes discovery of new and important matter or evidence which, after the exercise of due diligence, was not within its knowledge or could not be produced by it at the time when the Judgment was pronounced



or that the judgment is vitiated on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. It is settled law that the expressions "any other sufficient reason" "mean a reason sufficient on grounds at least analogous to those specified immediately previously, that is to say, to excusable failure to bring to the notice of the Court new or important matters or error apparent on the face of the record." Upon an application for review the Court cannot proceed to deal with the case on the merits as if on an appeal.

36. The Supreme Court of Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, holds 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. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may, also, be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal.

37. I am invited to decide about the apparent error, if any, discernible from the judgment sought to be reviewed. I am not satisfied that the judgment under review is erroneous on the face of it. This application for review is filed to re-argue the very same points rightly rejected by this Court.

Therefore, this application for review stands rejected.

I make no order as to costs.

38. In so far as the application for contempt is concerned non-compliance of the order by the contemnors is admitted. By order dated December 3, 1998 this Court, inter alia, directed the respondents in the writ petition to mutate the name of the first petitioner, that is W. H. Targett (India) Limited, in the register instead and in place of Marble Trading Company Limited.

39. An application for contempt is filed alleging willful and deliberate violation and disobedience of the said order. After filing of the application for contempt, an application for review is filed. In the application for review it is alleged that the charge of name to W H. Targett (India) Limited and the application for mutation to record the name of W. H. Targett (India) Limited are fraught with uncertainty, which was not brought to the attention of this Court.

40. I have, already, found that in the application for review virtually the points taken in the affidavit-in-opposition are reiterated. It is not open to the contemnors to give a wrong interpretation of the order. In any view of the matter, the view so taken by the contemnors are not found to be legally

sustainable. I hold that the stand taken by the contemnors is not bona fide. The contemnors are bound to comply with the order of this Court.

41. I am, therefore, of the opinion that this is a fit case for taking action in contempt. However, as the application for review was filed, in order to giving contemnors an opportunity to purge the contempt before I pass the sentence, I adjourn the matter for 4 (four) weeks to enable the contemnors to report compliance, failing which this Court will proceed to pass appropriate orders in respect of the contempt. If not, the contemnors will run the risk of being sentenced.

The office is directed to put up this matter on July 2, 2008 under the heading for orders.

All parties are to act on the Xerox sign copy of this order.