

(2003) 06 SHI CK 0003

High Court of Himachal Pradesh

Case No: Civil Review No. 14 of 2003

Sham Kumar

APPELLANT

Vs

Jayant Kumar

RESPONDENT

Date of Decision: June 26, 2003

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1, 114, 144, 47
- Himachal Pradesh Urban Rent Control Act, 1971 - Section 13

Citation: (2003) 2 ShimLC 414

Hon'ble Judges: M.R. Verma, J

Bench: Single Bench

Advocate: Bhupinder Gupta and A.P. Jaswal, for the Appellant; Sanjeev Kuthiala, for the Respondent

Final Decision: Dismissed

Judgement

M.R. Verma, J.

1.This petition u/s 114 read with Order 47 Rule 1 of the CPC (hereinafter referred to as "the Code") has been filed by the Petitioner for review of the order dated 16.9.2002 passed by this Court in Civil Revision No. 69 of 1999 and modifying a few of the directions contained in the judgment.

2. Brief facts leading to the filing of the present petition are that the Petitioner filed execution petition No. 1 of 1998 in the Court of the learned Sub Judge (1), Amb for execution of a decree passed in his favour in Civil Suit No. 13 of 1995 on 25.11.1995. During the pendency of the execution petition, the Respondent filed objections u/s 47 of the Code challenging the executability of the decree which were dismissed. Aggrieved Respondent preferred the said Civil Revision in this Court in which this Court held that since the decree was for eviction of the tenant within the Municipal Limits where Himachal Pradesh Urban Rent Control Act (hereafter referred to as "the Act") was applicable, therefore, the decree passed by the Civil Court for

ejection of the tenant could not be executed by virtue of the provisions of Section 13 of the Act. Therefore, the revision petition was allowed the order of the executing Court dismissing the objection was set aside. This Court, however, further directed to restore the execution petition and dispose it afresh in view of the findings recorded in the judgment dated 16.9.2002 disposing of the revision petition. The findings on the basis of which the above order regarding re-registration of the execution petition and fresh disposal thereof came to be passed as contained in the judgment dated 26.10.2002 of this Court read as under:

11. It was pointed out by the learned Counsel for the Petitioner that dispossession of the Petitioner in execution of the decree in question was stayed till further orders vide order dated 26.2.1999 by this Court in CMP No. 64 of 1999 filed in RSA No. 35 of 1999. The Petitioner, however, has been dispossessed on 26.2.1999 in execution of the decree in question. A perusal of the record reveals that an order staying dispossession of the Petitioner was passed by this Court on 26.2.1999 and on the same day, the Petitioner was dispossessed from the premises in question and the execution petition has been dismissed as fully satisfied. In the given circumstances of the case, the possession of the premises deserves to be restored to the Petitioner and appropriate orders are required to be passed on the execution petition afresh.

3. The present review petition has been preferred by the Petitioner on the ground that at the time of passing of the aforesaid directions by this Court, the execution petition stood fully satisfied, therefore, the remedy of the Respondent was by resorting to the provisions of Section 144 of the Code for restitution of possession and directions in this regard could not be given by this Court because the jurisdiction of this Court was limited to the extent of allowing or disallowing the objections u/s 47 of the Code. Since the possession stood already delivered to the Petitioner before the communication of the stay granted by this Court whereby the further proceedings in the execution were stayed, therefore, such directions could not be given in view of the provisions of Section 144 of the Code. This being an error apparent on the face of the record renders the directions relating to restoring of the execution petition and passing appropriate orders for restitution of the possession deserves to be reviewed.

4. I have heard the learned Counsel for the parties and have also gone through the relevant records.

5. The learned Counsel for the Petitioner contended that the possession of the premises in question had been delivered to the Petitioner in execution of the decree which stood fully satisfied, therefore, remedy of the Respondent for restoration of the possession was u/s 144 of the Code which power could be exercised only by the executing Court and by no other Court. Therefore, the direction given by this Court for restoration of the possession of the premises to the Respondent is apparently contrary to the provisions of Section 144 of the Code and constitutes an error apparent on the face of the record and deserves to be set right by way of review. It

was further contended that the execution petition once dismissed as fully satisfied, could not be ordered to be restored for further proceedings.

6. On the other hand, it was contended by the learned Counsel for the Respondent that the order sought to be reviewed has been passed by this Court after due consideration and being fully aware of the facts, therefore, even if it is assumed that some illegality has been committed, though there is none, it cannot be rectified by way of review. Therefore, the present petition merits dismissal.

7. It may be pointed out that review of a judgment/order is not a routine procedure. The Court cannot review its earlier order/judgment unless satisfied that there has been material error on the face of the record which has resulted in miscarriage of justice. If the Court was aware of what it was doing, review petition will not be entertainable. In case the error or mistake is the consequence of a wrong judgment or wrong inference, it cannot be said to be an error apparent on the face of the record and, therefore, cannot be reviewed. Even an error of law, if arrived at by a process of conscious reasoning, cannot be reviewed.

8. In the case in hand, this Court vide para 11 of the judgment, already set out in the earlier part of this judgment, has referred to the facts and circumstances of the case in sufficient detail leading it to pass the orders/directions which are sought to be reviewed. The conclusions therein had been arrived at not inadvertently but by a process of conscious reasoning. Evidently the order for restoration of possession came into being primarily for the reason that the execution of the decree had been stayed by this Court but on the day when the stay was granted, the decree was executed. It is implicit in the order that in such eventuality the Court took the view that handing over the possession after the stay has been granted by the Court, has to be restored and the parties had to be relegated to the position immediately before the passing of the stay order. Such order which has been consciously passed, even if illegal, cannot be reviewed.

9. As a result, this petition is dismissed.