Rajesh Arora (Deced.) represented thr'' Madan Mohan Arora, LR. Vs Union of India (UOI) and Another

Court: Delhi High Court

Date of Decision: Aug. 24, 2006

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 47 Rule 1, 114, 152, 80
Customs Act, 1962 â€" Section 111

Hon'ble Judges: A.K. Sikri, J

Bench: Single Bench

Advocate: Rajesh Tyagi, for the Appellant; Jaswinder Singh, for the Respondent

Judgement

A.K. Sikri, J.
The plaintiff had filed suit for recovery of Rs. 85 lacs which is disposed of vide order dated 20th July, 2005 passed by R.C.

Chopra, J. A decree in the sum of Rs. 17,25,000/- with proportionate costs is passed in favor of the plaintiff and against the defendants along with

pendente lite and future interest on the decretal amount at the rate of 12% per annum from the date of filing of the suit till realization. The plaintiff

has filed review application raising number of pleas on the basis of which contention of the plaintiff is that he is entitled to much more amount than

the sum awarded by this Court vide aforesaid decree. Notice of this review application was issued by R.C.Chopra, J on 29th July, 2005.

However, before the review application could be decided, the Hon''ble Judge retired and that is how this review application was argued before me

by the learned Counsel for the parties.

2. Before coming to the averments made in the review application, let me, in nutshell, state the case of the plaintiff and the basis on which aforesaid

amount is decreed. Mr.Rajesh Arora, the original plaintiff who had filed the suit (since deceased and is represented by the LRs.) had imported a

BMW car in the year 1993. After payment of custom duty the car arrived at Delhi. However, on 11th June, 1993, the customs department

impounded the said car and thereafter initiated proceedings u/s 111 of the Customs Act. This culminated in confiscation order. Challenging this

order, deceased filed a writ petition in this Court which was allowed vide judgment dated 19th December, 1997 quashing the show cause notice

and directing the defendants to return the car. It was also directed that the plaintiff would be at liberty to move court for award of damages. The

defendants'' attempt to challenge the Single Bench judgment of this Court before the Division Bench as well as before the Supreme Court failed as

LPA and SLP filed by the defendants herein were dismissed. On the strength of the observations of this Court in judgment dated 19th December,

1997 giving liberty to the plaintiff to claim damages, the plaintiff filed CS(OS) No. 2889/2000 claiming a sum of Rs. 85 lacs.

3. According to the plaintiff, the car was detained by the defendants illegally for a period of four years and 204 days and when delivery thereof

was given to the plaintiff after the orders of this Court, it had suffered dents and scratches all over including windscreens and the glasses on door

windows. It was manifest that the said car had been deliberately and intentionally/mishandled by the defendants. It was not even stored/kept safe,

secured and protected. because of negligence of the defendants, car was reduced to a heap of junk steel and was no more new nor could be

reckoned as a zero mileage vehicle. The plaintiff had to spent lot of money for repair of the car though still it was not completely restored to a new

vehicle. Car had depreciated substantially in value and the plaintiff could manage to get only a pittance on its sale. Thus he suffered costs and

damage and this was claimed under the following heads:

(i) Cost on restoration (revised) Rs. 3,13,421

(ii) Interest on Rs. 20 lakhs @ 24% p.a. for four yrs. 204 days Rs. 21,88,274

(iii) Damages on account of deprivation Rs. 5,00,000

(iv) Expected gains and profits Rs. 5,00,000

(v) Loss on sale of car Rs. 15,00,000

(vi) Litigation costs and other hidden (misc.) expenses Rs. 65,000

Total Rs. 51,16,695

4. The plaintiff also claimed interest at the rate of 24 per cent per annum for the period from 31st December, 1997 till the date of filing of the suit

and calculated the same at Rs. 36,43,647/-. In this manner, it is stated that he was entitled to Rs. 87,60,342/-. However, he rounded off and

restricted to Rs. 85 lacs.

5. The defendants did not file written statement. Their defense was struck off on 16th January, 2004 Mr. Madan Mohan Arora, father of the

plaintiff filed his affidavit in support of the averments made in the plaint. The defendants did not even cross examine him. Thus, it was a case of

unrebutted testimony of the plaintiff. Finding was returned to the effect that there was an illegal impounding and detention of the car by the

defendants and thus the plaintiff was entitled to claim the damages. Claim is allowed under different heads as under:

(i) On repairs of the car : Rs. 2,25,000/-

(ii) Damages on account of illegal impounding as a result of which the plaintiff suffered harassment and mental torture: Rs. 5 lacs (iii) 12% interest

on Rs. 20 lacs, the value on which the car was assessed by the defendants for a period of 4 and half years- Rs. 10,80,000/- Interest of Rs.

36,43,647/- claimed for the period from 31st December, 1997 to the date of filing of the suit was disallowed on the ground that the plaintiff took

time in approaching the court after the car was released on 31st December, 1997 and he could not take benefit of his own wrong. Claim of

Rs.15,50,000/- on account of loss on the sale of car was also rejected as not sustainable on the ground that the plaintiff had failed to prove on

record as to what price the car was sold by him after getting it repaired. Claim of Rs. 5 lacs on account of expected gains and profits was also

rejected for the reason that there was no evidence on record as to at what price the car could be sold by the plaintiff in the year 1993 when it was

illegally impounded.

Litigation costs and other expenses were not given for the reason that they were not proved by any evidence.

6. In this review application filed by the plaintiff, it is alleged that there are certain manifest mistakes in the judgment which need correction. In the

application, following mistakes are sought to be projected:

(a) Mistake in interest calculated at 12% as against statutory provision of 24%. Award of interest @ 24% cannot be termed as punitive.

(b) Disallowance of interest prior to the suit for the alleged delay in its institution is also uncalled for.

(c) The cost incurred on the restoration of the car is Rs. 3,13,421 and not Rs. 2,25,000/-.

(d) Loss on the sale of the car being disallowed is also a mistake.

(e) Lastly, judgment carries calculation mistakes in respect of interest which works out to Rs. 10,94,137 and not Rs. 10,80,000 and thus the total

relief under the judgment works out to Rs. 18,19,137 and not Rs. 17,25,000.

7. I may state at the outset that some of the issues raised by the plaintiff are not the `mistakes''. One has to make a clear distinction between a

mistake which can be rectified u/s 152 of the CPC (CPC) and the grounds on which review is permissible u/s 114 of the CPC. Different

yardsticks shall have to be applied while correcting the mistake on the one hand and on the other hand while deciding as to whether review is

warranted u/s 114 of the CPC.

8. Section 152 of the CPC stipulates that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any

accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties. This

Section is based on two principles, namely, (a) that the act of the court should not prejudice any party; and (b) that the courts have the duty to see

that their records are true and present the correct state of affairs. The provision talks of clerical or arithmetical mistakes or errors arising from any

accidental slip or omission. An arithmetical mistake is a mistake in calculation while a clerical mistake is of writing or typing. Error from an

accidental slip slop or omission is an error due to careless or omission made unintentionally and unknowingly also. While interpreting this provision,

the courts have held that a matter requiring elaborate arguments or evidence on questions of fact or law for its discovery cannot be categorized as

an error arising out of accidental slip or omission in order to bring it within the scope of Section 152. Where the court considered a legal provision

and came to a wrong conclusion consciously thinking that conclusion to be correct and passed a wrong decree, it is evidently not an error arising

from any accidental slip or omission but a mistake consciously committed and Therefore cannot be corrected u/s 152 of the CPC. The only

remedy open to the party in such cases would be to appeal. [Refer: Velayudhan Nair Vs. Kerala Kshemam Yunik Kuries Pvt. Ltd., Trichur, .

9. Review of judgment and decree, on the other hand, u/s 114 of the CPC read with Order 47 Rule 1 CPC can be sought on the following

grounds:

(a) On the basis of 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

(b) on account of some mistake or error apparent on the face of the record, or

(c) for any other sufficient reason.

10. The primary intention of review is reconsideration of the subject of the suit by the same Judge only on the aforesaid conditions. It has to be

distinguished from an appeal which is re-hearing by the superior court. It is trite law that an erroneous view of evidence or of law is no ground for a

review though it may be a good ground for an appeal. The power to review is a restricted power and the court is not to substitute a fresh or

second judgment but it enables the court to correct it or improve it because some material which it ought to have considered had escaped its

consideration or failed to be placed before it for any other reason. The court cannot under cover of it arrogate to itself the power to decide the

case over again because it now feels that the assessment of evidence, etc. done formerly was faulty or even incorrect. In that case the aggrieved

party"s remedy is to file an appeal and get it corrected through the appellate court if the aggrieved party feels that decision on fact or law rendered

by the court is erroneous.

11. Though the aforesaid principles are well settled through the catena of judgments and it is not even necessary to refer to such judgments, one

may usefully refer to a recent judgment of the Supreme Court in the case of Rajender Singh v. Lt.Governor, Andaman and Nicobar Islands and

Ors. decided on 4th October, 2005 (Citation to be taken out) cited by the learned Counsel for the review applicant . In that case the appellant had

been working continuously since 23rd September, 1976 as a Lecturer. He filed OA before the tribunal for regularisation of his services and

ultimately by the order of the tribunal direction was given to the respondents to regularise his services with effect from 23rd September, 1976. This

decision was also upheld by the High Court. Thereafter, the appellant filed another OA against denial of the award of senior scale and selection

grades. In this OA also he succeeded before the tribunal. However, writ petition filed by the respondents against the said order before the High

Court was allowed and order of the tribunal was set aside. The appellant filed a review application seeking review, inter alia, on the ground that

certain documents which were not in his possession earlier constituted discovery of new and important matter warranting review. The High Court,

however dismissed the review on the ground that the appellant had not been able to satisfy the court and failed to establish a situation which

prevented him from not producing those documents when the writ petition was heard and, Therefore, it could not be said that there have been

discovery of new and important matter which despite exercise of due diligence on the part of the appellant was not within his knowledge. Appeal

filed by the appellant to the Supreme Court was allowed and the Supreme Court held that the High Court was not correct in overlooking the

documents relied upon by the appellant. After convincing itself that those documents were not in possession of the appellant at the time of hearing

and even despite due diligence the appellant could not place the same before the Division Bench. These records were the minutes of the screening

committee held on 23rd June, 1987 and 4th March, 1992 wherefrom it is crystal clear that senior scale and selection grade have been awarded to

many lecturers by relaxing conditions and only on the basis of length of regular service in the college, on the basis of their teaching experience. In

the process, commenting upon the review jurisdiction, the Supreme Court observed :

In our opinion, review jurisdiction is available in the present case since the impugned judgment is a clear case of an error apparent on the face of

the record and non-consideration of relevant documents. The appellant, in our opinion, has got a strong case in their favor and if the claim of the

appellant in this appeal is not countenanced, the appellant will suffer immeasurable loss and injury. Law is well settled that the power of judicial

review of its own order by the High Court inheres in every Court of plenary jurisdiction to prevent miscarriage of justice.

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 through 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 revision petition is not correct which really necessitates our interference.

12. Keeping in view the aforesaid parameters, let me now examine the grounds on which review is sought.

(a) It is stated that interest should have been awarded at the rate of 24 per cent per annum instead of 12 per cent per annum and award of interest

at the rate of 24 per cent per annum cannot be termed as punitive. It is alleged that there is a statutory provision for award of 24 per cent interest.

However, during the course of arguments, learned Counsel for the review applicant could not point out any such provision as per which the plaintiff

was entitled to, on the basis of any statute, interest at the rate of 24 per cent per annum. The only submission made was that custom authorities

charge interest at the rate of 24 per cent per annum. That would not mean in a suit of this nature filed by the plaintiff against the custom authorities,

the plaintiff has to be necessarily granted interest at the rate of 24 per cent per annum. In the impugned judgment, reason for denying the interest at

the rate of 24 per cent is as follows:

Coming to the question as to at what rate the plaintiff can be awarded interest on this amount, this Court is of the view that the plaintiff is not

entitled to interest @ 24% per annum as claimed by him for the reason that he being a businessman, is entitled to market rate of interest only. He

cannot claim interest @ 24% per annum available to the Customs authority under the Customs Act as the said interest has an element of penalty

also and is not market rate of interest. The plaintiff has not led any evidence to show as to what was the market rate of interest during the period

1993-97 but considering the market custom, trade usage and Bank interest in those years, this Court is inclined to grant interest @ 12 % per

annum to him on the amount of Rs. 20 lacs of which, the plaintiff was deprived for a period of about 4 years. Learned counsel for the plaintiff relied

upon the judgment of the British court in the case of United Arab Maritime Company v. Blue Star Line Ltd. reported as (1968) All ER 731 in

support of the plea that interest should have been payable at the rate which was applicable at the relevant time. However, on this ground the

plaintiff cannot seek review as a particular view, after giving certain reasons, is taken by the court allowing interest at the rate of 12 per cent per

annum and in fact under the garb of plea that there is an error apparent on the face of record, the plea essentially is that court has not decided the

issue properly. It is, Therefore no necessary to go into this plea as such a plea seeking review of the judgment is not available and the appropriate

remedy is to go in appeal.

13. According to me, no ground to review this part is made out. (b) The plaintiff has also stated that the plaintiff is wrongly disallowed the interest

prior to the suit. The interest is disallowed by the court observing that it was the plaintiff"s fault not to approach the court earlier and he cannot take

advantage of his own wrong. Submission which is sought to be made is that there was no fault of the plaintiff inasmuch as decision given in the writ

petition became final only on the dismissal of LPA on 21st August, 2000. Soon after the dismissal the appeal the plaintiff served notice u/s 80 of

the CPC and immediately after the expiry of notice period, the suit was filed. While rejecting the interest for pre-suit period the court observed as

under:

The plaintiff is not entitled to interest in the sum of Rs. 36,43,647/- as claimed by him in para 23 of the plaint on the amount of Rs. 51,16,695/-

which is for the period 31.12.1997 to the date of the filing of this suit as the plaintiff cannot take benefit of his own wrong. He could have filed a

suit soon after the return of the car to him.?

Learned counsel for the plaintiff relied upon the judgment of House of Lords in the case of Pickett v. British Rail Engg. reported as (1979) 1 All

ER 774 in support of the proposition that award of interest on general damages is to compensate the plaintiff who is deprived of the use of the

damages for inflation and to preserve its real value. Learned Counsel for the review petitioner is right in his submission. It cannot be said, in these

circumstances, that there was delay on the part of the plaintiff in approaching the court or that he was taking benefit of his own wrong. He filed the

suit immediately after the dismissal of the LPA. The only time taken was the service of notice u/s 80 of the CPC which was a mandatory

requirement. Therefore, the plaintiff shall be entitled to pursuit interest also at the rate of 12 per cent per annum i.e. with effect from 19th

December, 1997 to 18th December, 2000

(c) According to the plaintiff, total cost incurred on restoration/repair of the car was Rs. 3,13,421/- and not Rs. 2,25,000/- as granted by the

court. In support of this plea, it is stated that the expenditure invoices were filed. In the judgment the learned Judge has stated that the evidence on

record shows that about a sum of Rs. 2,25,000/- was spent by the deceased plaintiff on repairs of the car. Some of the invoices are in Dirham and

it appears that while calculating the figure of Rs. 2,25,000/- amount spent in Dirham is not taken into consideration. Learned Counsel for the

plaintiff pointed out that it may be due to the reason that their convertible rate was not before the court which is Rs. 3.67 per dirham. Since the

documents/invoices were proved as Ex.PW-1/15 to Ex.PW-1/21 and also enquiries which were made for carrying out the repairs in the form of

email communications as Ex.PW-/14, I am of the view that the expenditure incurred in carrying out the repairs in foreign currency should also have

been taken into consideration in para 10 of the affidavit, the deponent categorically stated that cost of replacing the missing and damaged parts and

to restore the car into working condition came to Rs. 3,13,421/-. As pointed out, there is no cross-examination on this aspect. This would

constitute an accidental omission and judgment and decree needs to be modified on this account.

(d) Loss on the sale of car has been disallowed in the judgment. In the review application it is alleged that it is a mistake in disallowing the same.

Plea taken is that due to sad demise of the plaintiff, son of the applicant who had given his evidence by means of an affidavit, the deponent could

not give proper evidence. It is mentioned that the deceased was the applicant"s only son who had died quite young leaving behind three children

and his spouse. All children are still small and have yet to complete schooling and their studies.

Records were kept and maintained by the deceased and it took efforts and time for the applicant to locate these. The applicant has also filed RA

No. 19/2005 along with the application for placing on record these documents. These documents include the following:

(i) Cash receipt showing that car in question was sold to one Mr.Brahm Perkash Nagar for a sum of Rs. 6 lacs.

(ii) Delivery receipt of the said car to Mr.Nagar.

(iii) Tender notice of STC dated 14th February, 2001 to show the value of said car in its notice.

The reason given for adducing this additional evidence does not appear to be convincing. As per the averments made in the plaint itself, the

petitioner had sold the car at a lesser rate and in the process he had suffered losses. Therefore, at the time of filing the suit the plaintiff could file

documents in support at that stage not only those documents were not filed even thereafter at any stage. defense of the defendant was struck off

and the plaintiff was directed to file evidence in the form of affidavit. At that time, the original plaintiff had expired and the review petitioner was

brought on record along with other legal heirs. At the time of filing the evidence, if these documents were not available, the review petitioner could

seek further time. However, he chose to give his evidence along with the documents available with him and, Therefore, took the risk.

RA No. 19/2005 is accordingly rejected. Consequently, I hold that there is no ground to review the judgment on this aspect.

(e) Calculation error is pointed out by stating that after the interest is calculated at the rate of 12% per annum for 4 years and 204 days (and not

for four and half years as erroneously mentioned) on interest at Rs. 20 las interest would come to Rs. 10,94,137/-. The learned Counsel is correct

in his submission. The actual period is four years and 204 days and not four and half years and, Therefore, the amount payable would be Rs.

10,94,137/-. Once the amount under the head of interest and restoration is created, the amount payable would be Rs. 19,07,558/- and not Rs.

18,0500/-. The decree is modified to this extent. I may also mention that another argument of the learned Counsel for the plaintiff was that having

regard to the judgment of the Supreme Court in the case of Central Bank of India Vs. Ravindra and Others, amount to be adjudged on particular

dates as principal and further interest to grant on the amount adjudged as principal on each such interval. The said judgment in a case of bank

having regard to the specific stipulation for calculation of interest in the aforesaid manner would not be applicable in the instant case.

14. RA No. 17/2005 is accordingly partly allowed and the decree is modified to the extent stated above. No costs.