(2013) 11 CAL CK 0011

Calcutta High Court

Case No: R.V.W. No. 72 of 2013, C.A.N. No. 4062 of 2013 and C.O. No. 3307 of 2011

Sri. Partha Pratim Ghosh and Others		APPELLANT
	Vs	
Sri. Jagadish Debnath and Others		RESPONDENT

Date of Decision: Nov. 7, 2013

Hon'ble Judges: Asim Kumar Mondal, J

Bench: Single Bench

Advocate: Tarun Kumar Roy, Mr. Krishnendy Banerjee, Mr. Prithu Ghosh and Mr. Arnab Roy, for the Appellant;

Final Decision: Dismissed

Judgement

Asim Kumar Mondal, J.

This is an application u/s 14 read with Order 47 Rule 1 of the CPC praying for review of the judgment and order passed by this Court in C.O. No. 3307 of 2011 dated 29th January, 2013. The applicant filed one revisional application under Article 227 of the Constitution of India challenging the award in dispute case No. 28 of 2007 passed by learned Arbitrator dated November 28, 2007 and the impugned order of the learned Cooperative Tribunal passed in Appeal No. 24 of 2008 on January 13th, 2011 rejecting the application of the petitioners for stay of operation of the said award. No affidavit-in-opposition was ever filed by the opposite parties to the said revisional application. The revisional application being C.O. No. 3307 of 2011 was finally heard by this Court and dismissed the same by a judgment and order dated 29th January, 2011. It is alleged that the said order and judgment under review was dismissed without any concern being shown for the glaring instance of trickery and fraud committed on the judicial system though asserted by applicants. It is also alleged that there are certain apparent mistake and errors in findings and observations of this Court in the judgment of the said revisional application and as such the final order drawn on the basis of such finding is also illegal, wrong and erroneous for which the said judgment and order is liable to be reviewed. It is also contended that

the mistakes and errors are apparent on the face of record for which it is also not necessary to enter into any matter of controversy and as such order is liable to be reviewed.

2. In paragraph No. 5 of the revisional application the applicants strongly averred that dispute case and award passed therein as well as the said appeal against the said award filed in the names of applicants were beyond their knowledge. It was also asserted that applicants never received even any summons of the said dispute case. It will be evident from the concocted written objection filed on behalf of the defendant No. 3 and 4 in the said dispute case with the forged signatures of applicants Nos. 1 and 2 herein. There was grievous fraud practice upon the adjudicatory authority rendering the whole award vitiated in law and a nullity.

3. Being aggrieved by and dissatisfied with the judgment and order passed by this Court on January 29th, 2011 in C.O. No. 3307 of 2011 the applicants preferred the present application for review on the following grounds: -

This Court was wrong in holding that the same self plea has already taken in the purported appeal pending before the learned Tribunal since from the record it is evident that applicants clearly asserted in their stay application and the connected revision application that the purported appeal No. 24 of 2008 before the learned Tribunal was filed on their forged signature and not actually by them and as such question of taking such plea in the memo of appeal did not arise.

4. It was categorically stated in the stay application as well as in the revision application by the applicants that the arbitration proceedings was held and award was passed by the arbitrator in dispute case No. 28 of 2007 behind their back and completely beyond their knowledge. It is also alleged that this Court has wrongly observed that it is also a fact that both the parties advanced their respective arguments before learned Tribunal and the hearing matter was already been concluded and reserved for pronouncement of judgment as such the conclusion drawn on the basis of such erroneous findings and/or observations is also erroneous and wrong in consequence. Finally it is alleged that this Court was wrong in holding that the applicants could have taken recourse of the provision under Order 9 Rule 13 of the CPC before the appropriate forum.

5. Mr. Tarun Kumar Roy, Mr. Krishnendu Banerjee, Mr. Prithu Ghosh and Mr. Arnab Roy appear for the petitioners. I have heard at length the submission of learned Counsels appearing on behalf of the applicants. I have carefully perused the judgment passed by this Court in C.O. No. 3307 of 2011 on 29th January, 2013. Before dealing with the alleged erroneous findings as pointed out by the learned advocate for the applicants we are to take note of the provisions under Order 47 Rule 1 of Civil Procedure Code. The said provisions runs as follows:-

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 which 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 [K] Court of Small Causes,

And who from the discovery of new and important matter of 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.

6. Now let us consider the points as raised for review the judgment. The learned Counsel placed the contentions in paragraph 5 of the revisional application as the basis of his submissions. Learned counsel submits that the applicants strongly averred that the said dispute case and the award passed therein as well as the said appeal against the said award filed in the names of applicants were beyond their knowledge and the defendant No. 3 and 4 in the said dispute case challenged the signatures of applicant Nos. 1 and 2. In view of such averments it is submitted that this Court should have considered the facts and allowed the prayer in their revisional application.

7. To consider such contention in support of the prayer for review we are to see whether the facts as averted were properly dealt with by this Court or not in the impugned judgment dated 29th January, 2013 in C.O. 3307 of 2011. It appears that from the materials on record being C.O. No. 3307 of 2011 that the stay application filed by the applicants alleging practice of fraud in getting the signatures of the applicants behind their back and knowledge and on the said ground the stay application was filed before the learned Cooperative Tribunal in appeal case.

8. Admittedly the dispute case was disposed of in the month of November, 2007 and the appeal was preferred before the learned Tribunal in the year 2008 from the record it reveals that the matter was already been heard in full by the learned Tribunal on 30.09.2010 as noted in the order sheet in presence of both sides and it was kept for delivery of judgment. It is clear that the learned Tribunal did not pass any judgment till the revisional application was preferred and as such there was no scope to interfere into the matter and accordingly the revisional application being NO. 3307 of 2011 was disposed of.

9. It is the settled law that the power of review is not an inherent power. The provisions relating to power of review under Order 47 Rule 1 constitute an exception between the general rule to the fact that once a judgment is signed and pronounce it cannot afterward be altered. Thus the power to review is exercisable

only where the circumstances are strongly covered by the statutory exceptions contemplated under Order 47 Rule 1 as noted above. The instant case the grounds for review is error apparent. The review should not by no means an appeal in disguise whereby the erroneous decision is reheard and corrected, even if the parties are in a position to satisfy the Court that the order under review is an erroneous order. A statement/findings in a judgment that a particular thing happened or did not happen before a court ought not to be ordinarily challenged by a party unless both the parties agreed at the statement is wrong or the court itself admits that it was erroneous.

10. It is also the settled law that no point can be raised in review which has also been discussed and decided in the original hearing. Where there are two possible views regarding the appreciation of a particular fact of a case, taking one view even if it is erroneous cannot be said to be an error apparent on the face of record. There is a real distinction between an mere erroneous decision and an error apparent on the face of record. Where error of a substantial point of law stares one in the face, and there could reasonably be no two opinions, clear case of error apparent on the face of record would be made out.

11. In the instant case it has been alleged that the fact of finding, written objection or vakalatnama by challenging the signatures and on that ground the prayer for stay of the appeal has not been considered by this Court. Fact remains that the matter of stay as prayed before the learned lower Appellate Court is still pending as no judgment passed by the said Court and accordingly after discussing the matter and on the basis of the materials on record the revisional application under review has been disposed of. In fact there is no omission to consider important fact on the record which may be treated as mistake apparent on the face of record. There are two possible views regarding the appreciation/interpretation of the said fact on the case and this Court has taken one view that the matter is still pending before the learned Cooperative Tribunal, even it is erroneous that cannot be said to be an error apparent on the face of record.

12. In the present review application, there is no discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at the time when the judgment was passed by this Court, there is also no mistake or error apparent on the face of record which may be considered as sufficient reasons to obtain a review of the judgment.

13. Mere error or wrong view is certainly no ground as the Court has the jurisdiction to decide rightly or wrongly.

14. Therefore, I am of the view that the present review application has got no merit and as such same is rejected. Urgent Photostat certified copy of this order if applied for be given to the parties on priority basis.