SUPREME COURT OF INDIA

Ram Chandra Singh

Vs.

Savitri Devi

C.A.No.8216 of 2002

(N. Santosh Hegde and S.B.Sinha JJ.)

29.07.2004

ORDER

1. An application purported to be for clarification and / or modification of a judgment and order dated 9th October, 2003 has been filed by the respondents Nos.16 of the Appeal contending that certain factual errors had crept in the said judgment which could not be pointed as they were not present at the hearing of the appeal. Two apparent factual errors have been pointed out at page No. 2 and at page No. 6 of the judgment wherein the date of the consent decree passed in F.A. No. 450 of 1981 has been mentioned as 22.5.1988 instead and place of 22.5.1998 and the said consent decree was passed by a Single Judge instead of a Division Bench of the High Court.

2. It has further been pointed out that although this Court noticed that the appellant herein was not a party to the First Appeal before the High Court but the same had wrongly been considered to be a ground for passing the impugned judgment as they could not have been impleaded. It has further been urged that the consent decree passed in F.A. No. 450 of 1981 by the High Court having been set aside the same was non-existent in the eyes of law. The applicants furthermore averred that this Court has wrongly relied upon a stray statement made by the High Court to the effect that 'the auction sale was set aside by reason of the judgment dated 21.5.1992 by the High Court inter alia directing that the following remedy be taken recourse to by the applicant."

3. Drawing this Court's attention to second paragraph of page 6 of the judgment, it is contended that the statements made to the effect that the 'High Court committed a manifest error in modifying the judgment and order dated 22.6.1981 by passing the judgment dated 22.5.1998 in F.A. No. 450 of 1981' are wrong.

4. Various other contentions have also been raised touching upon the merit of the judgment.

5. Mr. P.S. Mishra learned senior counsel appearing on behalf of the appellant would submit that his client would be satisfied if this Court takes notice of the errors in the pleadings of the appellant as a result whereof the said mistakes have crept in the judgment and thus, the

applicants (Respondent Nos. 1 to 6 in the appeal) should be given the liberty to place the correct facts before the High Court. Mr. Mishra would contend that such a direction can be issued by this Court in ex debito justitiae. Reliance, in this regard, has been placed on Samarendra Nath Sinha and another vs. Krishna Kumar Nag, B. Shivananda vs. Andhra Bank Ltd. and Another and Jayalakshmi Coelho vs. Oswaid Joseph Coelho.

6. Dr. G.C. Bharuka, learned senior counsel appearing on behalf of the applicants, on the other hand, would submit that this application for clarification and/ or modification being in effect and substance an application for review is not maintainable in law. Reliance has been placed on Delhi Administration vs. Gurdip Singh Uban and others) and Common Cause vs. Union of India and others.

7. Before adverting to the rival contentions, as noticed hereinbefore, we may notice the relevant provisions of the *Supreme Court Rules, 1966*.

8. Order XIII, Rule 3 reads as under:

> "3. Subject to the provisions contained in Order XL of these rules a judgment pronounced by the Court or by a majority of the Court or by a dissenting Judge in open Court shall not afterwards be altered or added to, save for the purpose of correcting a clerical or arithmetical mistake or an error arising from any accidental slip or omission."

9. Order XL and Order LXVII, Rule 6 read as under:

> "XL. 1. The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground of an error apparent on the face of the record.
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> 3. Unless otherwise ordered by the Court, an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite party. An application for review shall as far as practicable be circulated to the same Judge or Bench of Judges that delivered the judgment or order sought to be reviewed.
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> 5. Where an application for review of any judgment and order has been made and disposed of, no further application for review shall be entertained in the same matter.
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> LXVII Rule 6. Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

10. A bare perusal of the purported application for clarification and/ or modification clearly goes to show that except two typographical errors at pages 2 and 6 of the judgment, the other

statements made therein either relate to the mistake of the High Court or the merit of the matter.

11. So far as, the purported error pointed out at page 6 of the judgment is concerned, it appears, this Court merely recorded therein the submissions of the learned counsel for the appellant and the same are not the findings of this Court.

12. It is furthermore not in dispute that the appellant was not a party in the first Appeal and not a party to the compromise before the High Court. The question as to why he was not a party to the first appeal may be contentions but the fact remains that he was not a party. One of the contentions raised relates to mistake committed by the High Court. The rest of the contentions raised in the applications touch the merit on the matter, which cannot be subject matter of an application for clarification and / or modification.

13. It is now well-settled that an application for clarification or modification touching the merit of the matter would not be maintainable. A court can rehear the matter upon review of its judgment but there for the procedure laid down in Order XL, Rules 3 and 5 of the Supreme Court Rules, 1966 as also Article 137 of the Constitution of India are required to be complied with as review of a judgment is governed by the constitutional as well as statutory provisions.

14. The applicants herein did not appear at the time of hearing. They, as noticed hereinbefore, have not to contend that there exist errors in the judgment which are apparent on the face of the records except the typographical. The prayer of the applicant is that apart from the corrections which are required to be made in the judgment as noticed hereinbefore the merit of the matter may also be considered inter alia, with reference to the pleadings of the parties. Such a course of action, in our opinion is not contemplated in law. If there exist errors apparent on the face of the record an application for review would be maintainable but an application for clarification and / or modification cannot be entertained unless it is shown that the same are necessary in the interest of justice. An application which is in effect and substance an application for review cannot be entertained de' hors the statutory embargo contained in Order XI, Rules 3 and 5 of the Supreme Court Rules, 1966.

15. In Gurdip Singh Uban (supra) the law has been laid down in the following terms:

> "17. This procedure is meant to save the time of Court and to preclude frivolous review petitions being filed and heard in open Court. However, with a view to avoid this procedure of 'no hearing', we find that sometimes applications are filed for 'clarification', 'modification' or 'recall' etc. not because any such clarification, modification is indeed necessary but because the applicant in reality wants a review and also wants a hearing, thus avoiding listing of the same in chambers by way of circulation. Such applications, if they are in substance review applications, deserve to be rejected straightway inasmuch as the attempt is obviously to by-pass O.XL, R3 relating to circulation of the application in Chambers for consideration without oral hearing. By describing an application as one for 'clarification' or 'modification' -

though it is really one of review - a party cannot be permitted to circumvent or by-pass the circulation procedure and indirectly obtain a hearing in the open Court. What cannot be done directly cannot be permitted to be done indirectly."

16. In Common Cause (supra), Lahoti, J (as the learned Chief Justice then was) speaking for a Division Bench observed:

> "2. We are satisfied that the application does not seek any clarifications. It is an application seeking in substance a review of the judgment. By disguising the application as one for 'clarification', the attempt is to seek a hearing in the open court avoiding the procedure governing the review petitions which, as per the rules of this Court, are to be dealt with in chambers. Such an attempt on the part of the applicant has to be deprecated."

17. Recently in Zahira Habibullah Sheikh and another vs. State of Gujarat and others), referring to Order XL, Rule 3, this Court opined:

> "6. As noted by a Constitution Bench of this Court in *P.N. Eswara Iyer vs. Registrar, Supreme Court of India*[1], *Suthendraraja vs. State*[2], *Ramdeo Chauhan vs. State of Assam*[3], *and Devender Pal Singh vs. State, NCT of Delhi*[4] notwithstanding the wider set of grounds for review in civil proceedings, it is limited to 'errors apparent on the face of record' in criminal proceedings. Such applications are not to be filed for the pleasure of the parties or even as a device for ventilating remorselessness, but ought to be resorted to with a great sense of responsibility as well.
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> 7. In *Delhi Admn. vs. Gurdip Singh Uban*[5] it was held that by describing an application as one for 'clarification' or 'modification' though it is really one of review, a party cannot be permitted to circumvent or by pass the circulation procedure and indirectly obtain a hearing in the open court. What cannot be done directly cannot be permitted to be done indirectly. The court should not permit hearing of such an application for 'clarification', 'modification' or 'recall' if the application is in substance a clever move for review."

18. Thus, the applicants cannot be permitted to raise any contention which had not been raised before this Court at the hearing.

19. It is no doubt true that in appropriate cases, this Court may pass an order ex debito justitiae by correcting mistakes in the judgment but inherent power of this Court can be exercised only when there does not exist any other provision in that behalf. Clerical or arithmetical mistake or an error arising from an accidental slip or omission and to vary its judgment so as to give effect to its meaning and intention is permissible as has been held in Samarendra Nath Sinha (supra). But in this case nothing has been shown as to why inherent power of this Court is required to be exercised except for correcting the typographical errors.

20. B. Shivananda (supra) also relates to a case where clerical or arithmetical mistakes have occurred in the judgment and decree which could be corrected.

21. In Jayalakshmi Coelho (supra) whereupon Mr. Misra relied upon, this Court observed:

> "13. So far as the legal position is concerned, there would hardly be any doubt about the proposition that in terms of Section 152 CPC, any error occurred in the decree on account of arithmetical or clerical error or accidental slip may be rectified by the Court. The principle behind the provision is that no party should suffer due to mistake of the court and whatever is intended by the court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice."

22. This Court upon analyzing some earlier decisions of this Court opined:

> "13. To illustrate the point, it has been indicated as an example that in a case where the order may contain something which is not mentioned in the decree would be a case of unintentional omission or mistake. Such omissions are attributable to the court which may say something or omit to say something which it did not intend to say or omit. No new arguments or re-arguments on merits are required for such rectification of mistake. In a case reported in Dwaraka Das vs. State of U.P (1999) 3 SCC 500) this Court has held that the correction in the order or decree should be of the mistake or omission which is accidental and not intentional without going into the merits of the case. It is further observed that the provisions cannot be invoked to modify, alter or add to the terms of the original decree so as to in effect pass an effective judicial order after the judgment in the case."

(Emphasis supplied)

23. This decision itself, thus, lays down that in the garb of correction of mistakes arising out of accidental slips or typographical error, the judgment cannot be altered or modified by this Court in exercise of its inherent power.

24. For the reasons aforementioned, we do not find any merit in these applications which are dismissed accordingly except to correct typographical errors appearing at page 2 and page 6 of the judgment namely, date of the judgment and order passed in First Appeal No. 450 of 1981 appearing at pages 2 and 6 should be read as 22.5.1998 in stead and place of 22.5.1988 and the same was passed by a learned Single Judge, not by the Division Bench.

25. No costs.

[1]*(1980) (4) SCC 680)* [2]*(1999) (9) SCC 323)* [3]*(2001 (5) SCC 715)*
[4]*(2003 (2) SCC 501)* [5]*(2000 (7) SCC 296)*