HIGH COURT OF GUJARAT

SUMITRABEN ANILKUMAR SHAH
Versus
DIVYABHANUSINGJI SAJJANSINGHJI

Date of Decision: 19 February 1999

Citation: 1999 LawSuit(Guj) 59

Hon'ble Judges: D C Srivastava

Eq. Citations: **1999 1 GLH 673**, 1999 2 GCD 1158, 1999 3 CurCC 440

Case Type: Civil Appeal; Civil Revision Application; Civil Appeal; Civil Revision Applicatio

Case No: 162 of 1999, 842 of 1989, 163 of 1999, 327 of 1987

Subject: Civil

Acts Referred:
Code Of Civil Procedure, 1908 Or 47R 1, Sec 115

Final Decision: Application dismissed

Advocates: S N Shelat, N S Sheth, S M Shah, R C Jani

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[1] These two Miscellaneous Civil Applications are proposed to be disposed of by a common order.

[2] Brief facts on which these applications have been moved are as under :

> Civil Revision Application No.842 of 1989 was a Civil Revision under Section 115 of the Code of Civil Procedure. This revision was decided on merits on 14.7.1998. On that day list was revised twice, but none appeared for the revisionist. As such the impugned order under revision was perused and the learned Counsel for the respondent was heard and Judgment was dictated.

[3] Civil Revision Application No.327/87 was likewise decided on 14.7.1998 after hearing the learned Counsel for the revisionist. None-appeared for the respondents in this revision as well.

[4] Review of these two orders is sought in these two Miscellaneous Civil Applications. Shri S.N.Shelat, learned Counsel for the applicants and Shri S.M.Shah, learned Counsel for the opposite party were heard at length. Before applications for review can be granted there are two hurdles before the applicant and it is only on clearing these hurdles that the petitioner can succeed.

[5] The first hurdle is that the review applications are delayed by 4 months and 3 weeks. Unless sufficient cause is shown for condonation of delay, the delay cannot be condoned on surmises. If the delay cannot be condoned then naturally the review application cannot be heard on merits. If on the other hand the delay is condoned then only review application can be considered on merits. For allowing the review application the Court can grant review under Order : 47, Rule : 1 of the Code of Civil Procedure only on three grounds. The first is discovery of new and important matter or evidence, the second is mistake or error apparent on the face of the record and the third is any other other sufficient reason.

[6] Prayer (B) in the two applications is for condonation of 4 months and 3 weeks's delay in filing the review application. In Para : 6 of the review application the only averment is that the delay may be condoned for the aforementioned reasons. The aforesaid mentioned reasons can be traced in Paras : 4 & 5 of the review petition. From Para : 2 of the review application it appears that the Judgment and order under review was delivered on 14.7.1998. Period of limitation for filing review application is 30 days from the date of the order or the Judgment. In Para : 4 of the review application it is said that when execution application was moved in the trial Court the applicant received information on 23.12.1998 that some decree was passed for possession against him. He made necessary inquiries in the executing Court. Thereafter he came to know that Civil Revisions aforesaid were decided on or about 24.12.1998. This is patently incorrect date. It should be the date of knowledge of dismissal of two revisions. The applicant in Para : 5 has stated that her Advocate also did not know that the revisions were disposed of on 14.7.1998, nor any information was sent to the applicant by the Advocate. Thereafter application under Order : 9, Rule : 13 C.P.C. was moved on 29.12.1998. The said application has been dismissed as not maintainable today. It is said that because of this review application could not be filed in time.

[7] The point for consideration is, can this assertion be said to constitute sufficient cause for condonation of delay in filing review application. Affidavit of the Advocate of the petitioner has also been filed for disposal of review application as well as for disposal of application for condonation of delay. It is not a case where the revisionist had no knowledge of the pendency of the revision. Para : 2 of the Affidavit of Shri N.S.Sheth, Advocate, shows that he was not present before the Court on 14.7.1998

when the revision was heard and allowed and it escaped from his notice that he had a matter before this Court. From this para it is clear that Shri N.S.Sheth had information that both the revisions were on the Board on 14.7.1998. The orders whose review is sought were passed not in hurry, but after revising the list twice. If in the first call the learned Counsel was not present mention could have been made. Even in the second call none was present. There was no question of advocate escaping to note that such revisions were listed for final hearing. Even on that date after disposal of the revisions request could have been made that opportunity of hearing may be given to the learned Counsel, but that was also not done. It is not deposed in the Affidavit of Shri Sheth that he was out of station. If he was very well in Ahmedabad he could have made mention before this Court. It is not deposed in the Affidavit that he was busy in some other Court. Consequently the Affidavit of Shri N.S.Sheth, Advocate does not furnish good and sufficient cause for condonation of delay. Likewise Paras : 4 & 5 of the Review Application also do not furnish sufficient cause due to which the delay can be condoned. No liberal view in matters of delay should be taken in such matters. In my opinion there is no good and sufficient cause for condonation of delay in moving the two review petitions. As such these review petitions have to be dismissed being time barred. The first hurdle therefore could not be crossed by the applicant.

[8] Even if liberal view in matters of condonation of delay is taken it has to be seen whether the review on the ground sought can be granted or not. The Apex Court in Shrimati Mira Bhajana v/s. Shri Mira Kumari Chaudhary reported in JT 1994 (7) SC 536 observed that it is well settled that the review proceedings are not by way of an Appeal and have to be strictly confined with in the ambit of Order : 47 Rule : 1 C.P.C. Order : 47, Rule : 1 C.P.C. as quoted above permits review only on three grounds, viz. discovery of new and important matters or evidence, or (ii) mistake or error on the face of the record, or (iii) any other sufficient reasons.

[9] Shri S.N.Shelat, learned Counsel for the petitioner did not argue that this is a case where discovery of new or important matter or evidence has been made after pronouncement of the two judgments. Thus, the first ground is not attracted. He also could not show that there is any mistake or error apparent on the face of the record or on the face of the two judgments whose review is sought. Thus, the second ground for review is also not applicable. Shri Shelat, in the course of his arguments did not point out any mistake or error apparent on the face of the Judgment nor did he points out that there is some error apparent on the face of the record due to which the two judgments have been rendered erroneous. Then remains the last ground, viz. any other sufficient reason. For this Mr.Shelat has argued that absence of counsel was sufficient cause and reason on which review can be granted.

[10] The words "any other sufficient reasons" have not been defined in the Code of Civil Procedure. However, the Privy Council in the case of Chhaju Ram v/s. Neki, reported in AIR 1922 PC 112 and Bisheshwar Pratap v/s. Parath Nath, reported in AIR 1934 PC 213, the Federal Court in Harishanker v/s. Anath Nath, reported in AIR 1949 FC 106 and the Supreme Court in MMB Catholicos v/s. M.P. Athanasius have held that the word "any other sufficient reason" must mean a reason sufficient on grounds at least analogus to those specified in the rule. From these decisions it is clear that unless any other sufficient reason is analogus to the other two conditions the review cannot be granted. Absence of Counsel or parties or negligence on the part of the party or his pleader is not a ground for granting review as was laid down by the Madras High Court in two cases, the Corporation of Madras v/s. Arunachalam, reported in AIR 1947 Mad. 288 and Anthony v/s. Anthony reported in AIR 1962 Mad. 304 and also by the Nagpur High Court in Manorath v/s. Atma Ram, reported in AIR 1934 Nag. 187. It is thus clear that if the Affidavit of Shri N.S.Sheth is taken into consideration it furnishes the grounds of inadvertance or negligence on his part in not attending the two revisions which were on the Board and this negligence or inadvertance cannot be a ground for granting review.

[11] Shri S.N.Shelat, learned Counsel has relied upon two decisions of the Apex Court in support of his contention that review can be granted, but in my opinion both the cases are distinguishable on facts. In Jwala Prasad v/s. Ajodhya Prasad, reported in A.I.R. 1983 SC 304 the facts were all together different. It was a case where restoration application was moved for restoration of revision dismissed for default. The said application was dismissed. The Apex Court held that the revision could have been restored. The facts before me are all together different. Here two revisions were not dismissed in default, rather both the revisions were decided on merits after considering the two judgments of the courts below and the material on record. It was thus decision on merits of the case and not dismissal in default. There is no prohibition in deciding revision on the basis of material on record even in absence of the revisionist. The two judgments whose review is sought cannot be said to be judgments and orders dismissing the revision in default. As such the Apex Court's verdict in the aforesaid case cannot be applied. Similar is the case of Shrimati Lachhi Tewari v/s. Directors of Land Record, reported in A.I.R. 1984 SC 41. Here also the facts were all together different. In this case rule nisi was dismissed in default. Its restoration was sought which was rejected by the High Court. The Apex Court reversed the judgment of the High Court. It is thus clear that both these cases cited by Shri S.N.Shelat are not applicable to the facts of the case before me.

[12] In view of the above discussion it is clear that none of the three grounds on which review can be granted has been made out by Shri S.N.Shelat.

[13] In the end Shri S.N.Shelat argued that review can be granted under Section 151 C.P.C. Such mention has been made in Para : 2 of the review application. I am, however, unable to accept this contention for the obvious reason that if there is a specific provision in the Code of Civil Procedure and the case is not covered under that provision then inherent jurisdiction under Section 151 C.P.C. cannot be exercised by a Court to over-ride the express provision of Order 47, r 1 C.P.C. If there would have been no provision for review in Civil Procedure Code then certainly inherent jurisdiction could be exercised under Section 151 C.P.C. but since there is specific provision for review under order : 47, Rule : 1 C.P.C. power and jurisdiction in the nature of inherent jurisdiction can neither be claimed by the petitioners nor can be exercised by this Court. Thus, no review under Section 151 C.P.C. is permissible.

[14] Section 151 provides that nothing in this Code 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. The power of review is not inherent power. It must be conferred by the law either specifically or by necessary implication. The review is practically the rehearing of a case by the same judge who has decided it. Such power should not be exercised unless the statute gives it as for saying that the superior court should not hear an Appeal from the trial Court unless such power is given to it by the statute. Exercising power of review over-riding the express provision of Order : 47 Rule : 1 C.P.C. would not be in the interest of justice rather it would be permitting the party to abuse the process of the Court. As such review under Section 151 C.P.C. on the facts and circumstances of the case cannot be granted.

[15] For the reasons given above there is no merit inthese two Applications for granting review. Both the Applications are accordingly rejected. No order as to costs.