

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

Review Pet. No.13 of 2023

Food Corporation of India and Others.

.....Petitioners

_V_E_R_S_U_S_

Smt Namita Paul

.....Respondent

For Petitioner(s) : Mr. A. Bhowmik, Advocate.
For Respondent(s) : Mr. None.

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

_O_R_D_E_R_

15/02/2023

Heard Mr. A. Bhowmik, learned counsel appearing for the review petitioners. None appears for the respondents.

This review petition has been filed under Section-114 read with Order-47 of the Code of Civil Procedure seeking review of the order dated 08.09.2022 passed in I.A.No.01 of 2022 passed in RFA. No.07 of 2022 and the consequential judgment and decree dated 08.09.2022 in RFA No.07 of 2022 passed by this Court.

The petitioners have prayed for following reliefs:

“Under the circumstances stated above it is most humbly and respectfully prayed to allow the review petition filed by the review petitioners and recall the order dated 08.09.2022 passed in I.A.No.01 of 2022 in RFA No.07 of 2022 and the order dated 08.09.2022 passed in RFA No.07 of 2022 by this Hon'ble Court and accordingly be pleased to allow the application for condonation of delay bearing I.A. No.01 of 2022 in RFA No.07 of 2022.”

The facts in brief are that the respondent has instituted MS 27 of 2010 before the Ld. Civil Judge, Jr. Division, Court No.1 West Tripura, Agartala for recovery of a sum of Rs.54 lakhs being security deposit and loss of

profit. The Food Corporation of India floated a Transportation Contract dated 08.08.2008 for transportation of food grains from Changsari to go-down complex at Agartala for a period of 2 years. The respondent participated in the tender process and submitted bid which was found to be lowest and was accepted by the FCI and accordingly contract was awarded in favour of the respondent vide appointment letter dated 17.11.2008.

The respondent accordingly started the work but suspended the work mid way on account of load restriction imposed under the Motor Vehicle Act. It is highlighted that the respondent was carrying higher load in the permissible limit and when the enforcing agencies insisted of adherence to the load restrictions, the respondent suspended the work resulting into huge loss to the FCI on account of Demurrage Charges and loss on account to payment made to ad-hoc contractors.

Upon suspension of work done by the respondents the FCI had to impose Clause –X(C) of agreement upon the respondent and had to get the work done for the remaining period by engaging ad-hoc contractors. In getting the work done through ad-hoc contractors FCI had to pay an excess of Rs.1,43,18,251/- as differential amount for non-performance of the work by the respondent.

The FCI incurred demurrage charges and unrecovered demurrage charges stood at Rs.58,55,126/- accordingly, the FCI also filed a counter claim registered as MS(CC) 14 of 2011. Both MS 27 of 2010 and MS (CC) 14 of 2011 were filed together before the learned Civil Judge, Sr. Division Court No.1, West Tripura Agartala. Vide judgment and decree dated 11.05.2016 the suit filed by the respondent was dismissed with finding by the learned trial Court that it was the respondent who was violating the norms of load restrictions and when the enforcing agencies imposed load restrictions on the respondent, the respondent suspended the work as the respondent was violator of law and therefore not entitled to any damages, compensation, etc.

So far as the money suit being MS (CC) 14 of 2011 filed by the review petitioners was concerned the same was dismissed on technical grounds as examination in chief of Sri Devendra Khirkar, Area Manager, FCI was filed but, subsequently the said Area Manager was transferred. The review petitioners filed fresh examination-in-chief but on consecutive dates fixed none appeared for cross examination and therefore in the absence of any evidence the money suit filed by the review petitioners was dismissed.

In view of above discussion, this Court is of the view that the power of review is distinct from the Court's power to hear appeals, i.e. the appellate jurisdiction. When hearing a review petition filed against its own order or judgment, the Court does not rehear the case at hand, as it would in an appeal. The purpose of a review petition is limited to remedying an apparent error or the resultant grave injustice that has been the consequence of a decision. The Court is thus restricted in the exercise of the power of review to cases where there is an error apparent on the face of the record or in accordance with the provisions of Order-XLVII of the Code of Civil Procedure, 1908.

The scope of the power of review was explained by the Hon'ble Apex Court in ***Northern India Caterers (India) v Lt. Governor of Delhi (1979)*** wherein the Court held that *"a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision in the case. Normally the principle is that a judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. If the attention of the Court is not drawn to a material statutory provision during the original hearing the Court will review its judgment. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice."*

Accordingly, the present review petition cannot be entertained. In terms of above, the review petition stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

CHIEF JUSTICE (ACTING)

A. Ghosh

