

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.199 of 2011

IN

MA 539 of 2007

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Ram Salt Traders Proprietor Manish Nahatta, resident of Gulab bag, P.O. & P.S.:
Gulab bag, District: Purnia

.... Petitioner

Versus

The Union of India, through the General Manager, N.F.Railway, Maligaon,
Guwahati

.... Respondent

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Appearance :

For the Petitioner/s : Mr. KRISHNA MOHAN MURARI, ADV.

For the Respondent/s : MR. SIDDHARTHA PRASAD, ADV.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 29-04-2015

Heard the learned counsel for the petitioner.

This petition has been filed for review of the order dated 23.02.2011 passed in Miscellaneous Appeal No. 539 of 2007 by which the Miscellaneous Appeal No. 539 of 2007 has been dismissed on the ground that the appellant had failed to establish his title over the consignment in question.

Learned counsel for the petitioner however submits that the Railway did not produce the original Railway Receipt bearing no. 846488 dated 15.03.1998 as also the copy of the delivery book by which the part delivery of 900 bags of I/salt was made to the present appellant, which were in their custody. It is further submitted that after the dismissal of the appeal, the petitioner has sought for information under the Right to Information Act, 2005 through his



counsel from the concerned Railway Authorities with regard to the title of the consignment being copy of the original Railway Receipt bearing No. 846488 dated 15.03.1998. It is further submitted that the concerned Railway Authorities have supplied the detailed information along with the copy of the delivery book with forwarding letters dated 05.05.2011 which establish that the part delivery of 900 bags of alleged consignment was made to the present appellant. It has further been submitted that the aforesaid documents were not in possession of the present appellant at the time of hearing of the present appeal and thus he could not establish his title over the alleged consignment and the Railway-respondent has intentionally and deliberately suppressed the material fact annexed as Annexure-I and he submitted that it may be admitted as evidence and after adducing the evidence, it be considered and the order in appeal be modified.

The learned counsel for the respondent, however, submits that the jurisdiction in review is very limited and it only requires that the error apparent on the face of record and not give opportunity to fill up the lacuna or defects fell in deficient in prosecuting the appeal. It is further submitted that an additional evidence is required to be considered only if it confirms to conditions mentioned in Order 41 Rule 25.

It has been further contended that the matter be



remanded to the court below for fresh consideration. However, it is submitted that a remand can only be made in view of the provision contained in Order 41 Rule 23 and the Order 41 Rule 25. However, no case has been made out to warrant the remand nor it is submitted that nothing has been brought to the notice that any error apparent on the face of the record, which requires review of the order and hence the petition for review is required to be dismissed.

However, having regard to the respective submissions, it is apparent that the review has been sought on the ground that the petitioner has not adduced any evidence to establish the title over the consignment in question such as the documents like the original Railway Receipt at the delivery and only after the disposal of the appeal he sought information from Right to Information Act with regard to the title of the consignment, which was not in possession of the present appellant hence, prayer made to consider annexure-1 the report and information sought under the Right to Information Act or allow to adduce the additional evidence or remand the matter to court below to entitle the petitioner to adduce evidence on title over the consignment in question.

However, to attract the provision of Order 41 Rule 27 for adducing additional evidence, the appellant is required to fulfill the two conditions as enshrined in Order 41 Rule 27, which provides



that the parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary in the appellate court unless he shows that the court from whose decree the appeal is preferred has refused to admit evidence which sought to have been admitted and/or further the second condition that the parties seeking to produce additional evidence establish that notwithstanding the exercise of due diligence such evidence was not within his knowledge or could not after the exercise of due diligence be produced by him at the time when the decree appealed against was passed. However, the two conditions mentioned has not been established. It is not the case of the petitioner that the said evidence which requires to be adduced was refused to be adduced by court below which passed the decree nor the petitioner been able to make out a case that in exercise of due diligence such evidence was not within his knowledge or could not after exercise of due diligence he was able to know or produce and hence the condition for adducing additional evidence has not been fulfilled to attract the provisions of Order 41 Rule 25. Moreover such exercise on a petition for review is not permissible when there is no reason to infer that the error is apparent on face of record.

Further, with regard to the law of remand under Order 41 Rule 23 it is not a case that the matter decided on preliminary issue by the court and hence Order 41 Rule 23 is not applicable nor Order 41

Rule 25 is applicable in the case while entertaining the petition for review under Order 47 of the C.P.C.

However, a petition for review cannot be taken as the hearing of the matter in appeal. It is useful to say that if the Court finds error pointed out in the review petition that the order was passed under a mistake of fact and the earlier judgment should not have been passed but for erroneous assumption, which in fact did not exist, and its preparation had resulted in miscarriage of justice then in that case nothing would preclude the court from rectifying the error. However, it has not been pointed out that any error is apparent on the face of the record and only material and the point raised that certain materials had not been brought on record and so a finding was recorded that the petitioner has not been able to establish that he is either a consignor or a consignee or an endorsee or had a title over the consignment and the submission that the petitioner be given the liberty to adduce evidence to produce certain documents so that he be able to establish the title over the consignment and an opportunity be given to adduce evidence, which is not permissible under a petition for review. Hence, I do not find any merit in the review petition, hence the review petition is, accordingly, dismissed.

(Gopal Prasad, J.)

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