

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO. 12 OF 2015
IN
WRIT PETITION NO. 84 OF 2014

ROSMERTA TECHNOLOGIES LTD. THROUGH
ITS AUTHORIZED SIGNATORY SHRI.
SANJEEV CHAVAN.

... Applicant

Versus

STATE OF GOA, THROUGH ITS
PRINCIPAL SECRETARY, TRANSPORT
DEPARTMENT AND 3 ORS.,

... Respondents

Mr. S. S. Kantak, Senior Advocate with Mr. P. Talaulikar and Mr. Samir Taleigaonkar, Advocates for the applicant.

Mr. A. N. S. Nadkarni, Advocate General with Mr. D. Lawande, Government Advocate for the respondent nos. 1 to 3.

Mr. D. K. Singh and Mr. Parikshit S. Sawant, Advocates for respondent no.4.

Coram:- F. M. REIS &
K. L. WADANE, JJ.

Date:- 1st March, 2016

ORAL ORDER :

Heard Mr. S. S. Kantak, learned Senior Counsel appearing for the applicant, Mr. A. N. S. Nadkarni, learned Advocate General appearing for the respondent nos. 1 to 3 and Mr. D. K. Singh, learned counsel appearing for the respondent no.4.

2. The above application seeks for review of the order dated 05.08.2014 whereby the writ petition filed by the applicant inter-alia challenging the terms in the tender process came to be rejected.

3. Mr. Kantak, learned Senior Counsel appearing for the applicant has pointed out that the applicant has preferred a Special Leave Petition before the Apex Court which came to be disposed of by order dated 05.12.2014 whereby the Special Leave Petition was allowed to be withdrawn with liberty to the applicant to approach this Court in a review petition. The learned Senior Counsel further pointed out that the applicant has extensively argued that Clause 29 of the tender document would create a monopoly in favour of the Goa Electronic Limited as according to him despite of the applicant being L1 bidder in such process, the said company was permitted to match with such offer of the applicant. The learned Senior Counsel has given different illustrations whereby in case such clause is allowed to stand, it would result in a monopoly in favour of such company and no tenderers would be able to effectively submit their offers. The learned Senior Counsel further pointed out that though such arguments were advanced before this Court, there is no finding on that count in the order passed by this Court. The learned Senior

Counsel has further pointed out that the judgments relied upon by this Court whilst coming to the conclusion that there is no arbitrariness in Clause 29 were not at all applicable to the facts of the case as all such judgments were not in connection with the tender process. The learned Senior Counsel thereafter has taken us through the order passed by this Court to point out that as this aspect of monopoly has not been considered by this Court, there is error apparent on the face of record which would call for interference by this Court in terms of Order 47 Rule 1 of the Civil Procedure Code. The learned Senior Counsel further pointed out that the above review petition be admitted and the matter be posted for final hearing.

4. On the other hand, Mr. A. N. S. Nadkarni, learned Advocate General appearing for the respondent nos. 1 to 3 has pointed out that while disposing of Writ Petition filed by the applicant this Court had framed three points for determination as reflected to at para 9 of the said order. The learned Advocate General further submits that this Court has come to the conclusion that the petition filed by the applicant is hit by delay and laches and further that the petitioner is estopped from raising such allegations. The

learned Advocate General further points out that this conclusion arrived at in the said order has not been assailed by the applicant in the above review application and as such according to him this itself would not call for any interference in the order passed by this Court, in the present review application. The learned Advocate General further submits that this Court upon appreciating the material on record has come to the conclusion that the subject Clause 29 is not arbitrary and as such, it is not open for the applicant to assail such finding in the present review application. The learned Advocate General as such points out that there is no error apparent on the face of record which would call for interference by this Court.

5. Mr. D. K. Singh, learned counsel appearing for the respondent no.4 has pointed out that the applicant is raising new grounds in the present review application which is not permissible in law. The learned counsel further pointed out that all contentions raised by the applicant have been duly considered by this Court while disposing of Writ Petition filed by the applicant. The learned counsel further pointed out that there is no error apparent on the face of record nor any justifiable reason which would call for review of the order passed by this Court. The learned counsel further pointed out

that the Special Leave Petition was extensively argued before the Apex Court and as no relief was being granted by the Apex Court, the applicant sought liberty to withdraw the said petition to file the present review petition.

6. We have considered the submissions of the learned counsel appearing for the respective parties and we have also gone through the records. It is well settled that the review petition cannot be an appeal in disguise. It is not open for this Court to re-appreciate the material and to ascertain whether any error is committed by the Court whilst disposing of the writ petition as this cannot be a ground to review the judgment disposing of the writ petition. No doubt the power of review is in every Court preventing the miscarriage of justice or to correct the gross and palpable error committed by it. But, such powers can be exercised only if there is an error apparent on the face of record or there is discovery of a new material or documents which despite of due diligence could not be produced when the earlier judgment was made. An error is said to be apparent on the face of record only in case it does not require long drawn out process of reasoning. In the present case, in order to examine the

contention of Mr. Kantak, learned Senior Counsel appearing for the applicant, a process of long reasoning would be required to re-appreciate the material on record which is not permitted in the review petition.

7. Apart from that, we find that as rightly pointed out by the learned Advocate General appearing for the respondent nos. 1 to 3 that the writ petition filed by the applicant was also dismissed on the ground of laches as well as on the ground of estoppel. There is no challenge in the above review petition on such findings arrived at in the judgment disposing of the writ petition. In such circumstances, we find that there is no case made out by the applicant for any review of the judgment passed by this Court. There is no justifiable reason for the review of the judgment nor any error apparent on the face of record in terms of Order 47 Rule 1 of the Civil Procedure Code.

8. The Apex Court in the Judgment reported in **(2014) 7 SCC 663 in the case of Usha Bharti v. State of U.P.**, has observed at paras 68 to 70 thus :

“**68.** We have no hesitation in accepting the submission of Mr

Bhushan that the High Court or this Court, in exercise of its powers of review can reopen the case and rehear the entire matter. But we must hasten to add that whilst exercising such power the court cannot be oblivious of the provisions contained in Order 47 Rule 1 CPC as well as the rules framed by the High Courts and this Court. The limits within which the courts can exercise the powers of review have been well settled in a catena of judgments. All the judgments have in fact been considered by the High Court in pp. 16 to 23. The High Court has also considered the judgment in *S. Nagaraj v. State of Karnataka*, which reiterates the principle that: (SCC p. 619, para 19)

“19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice.

69. These principles are far too well entrenched in the Indian jurisprudence, to warrant reiteration. However, for the sake of completion, we may notice that Mr Bhushan had relied upon Board of Control for Cricket in India v. Netaji Cricket Club and Green View Tea & Industries. It would be useful to reiterate the following excerpts:

69.1. In Board of Control for Cricket in India, it was observed that: (SCC p. 765, para 90)

“90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit'

69.2. This Court in Green View Tea & Industries reiterated the view adopted by it in S. Nagaraj. Therefore, the ratio of Green View Tea is not applicable in this case.

70. In view of the observations made in the aforesaid judgments, this Court

would not be justified in holding that the High Court has erred in law in not reviewing its earlier judgment.”

9. For the aforesaid reasons and taking note of the observations of the Apex Court noted hereinabove, we find that there is no error apparent on the face of record which would call for review of the judgment passed by this Court.

10. In such circumstances, we find no merit in the above review petition which stands accordingly rejected.

K. L. WADANE, J.

F. M. REIS, J.

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