

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.293 of 2019

In
Civil Writ Jurisdiction Case No.12574 of 2019

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1. Ganga Memorial and Educational Society through its Secretary Manoj Kumar @ Manoj age about 51 years, Male, S/o Sri Naresh Prasad Sinha, Resident of NH-31, Kharura, P.O. and P.S.-Harnaut, Distt.-Nalanda.
 2. Manoj Kumar @ Manoj, Son of Sri Naresh Prasad Sinha, Resident of Flat NO.407, Maharaja Kameshwar Complex, Hraser Road, Patna.
 3. Smt. Nibha Sinha @ Nibha Daughter of Sri Manoj Kumar @ Manoj, Resident of Flat No. 407, Maharaja Kameshwar Complex, Fraser Road, Patna.
 4. Smt. Damyanti Devi Wife of Shri Umeshwar Prasad Singh, Resident of Village-Chamarichak, P.O.-Jamsaut, P.S.-Shahpur, District-Patna.
 5. Sri Dilip K Umar Singh Son of Shri Umeshwar Prasad Singh, Resident of Village-Chamarichak, P.O.-Jamsaut, P.S.-Shahpur, District-Patna.

... .. Petitioners

Versus

1. The Central Bank of India, through its Chief Manager, Regional Office, Block-B, Second Floor, Maurya Lok Complex, Patna-1.
2. Authorized Officer, Central Bank of India, Regional Office, Patna Maurya Lok Complex, Patna-800001.
3. M/s Keshav Hospital Pvt. Ltd. through Managing Director, Dr. Kumud Kamini, Wife of Dr. Ashok Kumar, Resident of B/9 Finance Colony, Khajpura, Ward No. 02, Rukanpura, Patna.
4. Smt. Sulekha Kumari Daughter of Shri Aditya Kumar, Resident of New Jaganpura, Patna.
5. Chairperson, Debt Recovery Appellate Tribunal, 147-A-58/1, Jawahar Lal Nehru Road, Tagore Town, Allahabad.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr.Y.V. Giri, Sr. Advocate Mr.Sanjay Singh Thakur, Advocate Mr.Pranav Kumar, Advocate
For the Bank	:	Mr.Ajay Kumar Sinha, Advocate Mr.Sandeep Kumar, Advocate Mr.Rohit Raj, Advocate
For the Res. No. 3	:	Mr.P.K. Shahi, Senior Advocate Mr.Murari Prasad Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 05-09-2019

On 30.08.2019, as soon as C.W.J.C. No. 20423 of



2018 was called out, Mr. S.S. Thakur, appearing on behalf of the petitioners submitted that in fact one of the cases being C.W.J.C. No. 12574 of 2019 of these petitioners which is connected with the present writ application was earlier heard and disposed off by this Court.

It was further informed that one C.W.J.C. No. 18491 of 2016 which was filed by the Bank against the order of the Tribunal in first round of Litigation in S.A. No. 59 of 2016 had been filed from my chambers prior to my elevation as Judge of this Court, the said matter was later on assigned to Mr. Ajay Kumar Sinha, learned Advocate representing the Bank who had appeared in the case and had withdrawn the writ application.

Mr. Thakur as well as Mr. Sinha, learned counsel for the parties made a joint submission that in fact they completely missed to point out this fact to this Court in course of hearing of C.W.J.C. No. 12574 of 2019 and being totally unaware of this situation the writ application was heard and then the same was disposed off. Since this fact was brought to the notice of this Court, on 30.08.2019 this Court passed the following order in C.W.J.C. No. 20423 of 2018 :-

“When C.W.J.C. No. 20423 of 2018 is called out, Mr. S.S. Thakur, learned Advocate appeared on behalf of the petitioners and informed this Court that in the earlier round of litigation a writ application being C.W.J.C. No. 18491 of 2016



was filed through me as an Advocate which remained pending without hearing, later on after my elevation Mr. Ajay Kumar Sinha was engaged on behalf of the Bank and he had appeared in the case which was withdrawn. Learned counsel has, at this stage, also informed that in fact earlier a writ application being C.W.J.C. No. 12574 of 2019 was also heard in this Court but on that day he could not point out this Court this fact and even the learned counsel representing the Bank was unable to inform the Court as a result whereof C.W.J.C. No. 12574 of 2019 was heard and disposed off by dismissing the writ application. An another matter at serial no. 44 being C.W.J.C. No. 13042 of 2019 arising in the same proceeding is also the connected case and hence these matters may go outside the list of this Court and be placed before another Bench.

Mr. Ajay Kumar Sinha, learned counsel for the Bank is also present and submits that on 30.07.2019 when C.W.J.C. No. 12574 of 2019 was being heard, he could not bring it to the notice of this Court but now that it has been noticed, he would have no objection if the order dated 30.07.2019 is recalled and the said writ application be also directed to be listed before another Bench.

In the aforesaid view of the matter, let these cases be listed on 2nd September, 2019 once again along with C.W.J.C. No. 12574 of 2019 so that an appropriate order may be passed by clubbing all the three cases together.”

The present Civil Review Application being Civil Review No. 293 of 2019 has been filed with a prayer to recall the order dated 30.07.2019 passed by this Court in C.W.J.C. No. 12574 of 2019. In Paragraph ‘5’ of the Civil Review Application the following statements have been made :-

“5. That since neither the counsel for the



petitioner nor counsel for the bank could bring in to the notice of the Hon'ble Court to facts stated in paragraph 2 of the review petition that in earlier round of litigation Hon'ble Justice was engaged as an Advocate of the Bank and counsel for the bank would have no objection if the Order dated 30/07/2019 passed in C.W.J.C. No. 12574 of 2019 is recalled, this Hon'ble Court direct the Registry to list all the cases for passing appropriate Order , Copy of Order dated 30/08/2019 is annexed and marked as Annexure-2."

Copy of the Review Application has been served upon learned counsel for the Bank as well as the private respondent nos. 3 and 4. While learned counsel for the petitioners and learned counsel for the Bank are unanimous in their submission that in the given facts and circumstances the order dated 30.07.2019 passed in C.W.J.C. No. 12574 of 2019 be recalled in the interest of justice as the same will be in tune with the principles well settled that justice should not only be done it seems to have been done.

Mr. P.K. Shahi, learned Senior Counsel assisted by Mr. Murari Prasad Sinha, Advocate has contested this submission. Learned Senior Counsel submits that the petitioners as well as the Bank having taken an opportunity not to disclose this fact before this Court, now that the writ application has been dismissed and the petitioners have filed Letters Patent Appeal against the said order of this Court, they cannot be



allowed to turn around and take this plea so as to get a recall of the order. It is submitted that in fact the conduct of the petitioners and the Bank would amount to waiver and Forum Shopping.

Learned counsel for the petitioners and the Bank have, however, submitted that the previous writ was filed in the year 2016 and the same was withdrawn which both of them completely missed to point out, it was a bonafide mistake on their part in not informing the Court when the matter was being heard and nothing more.

Learned counsel for the private respondents have received the copy of the review application and oral submissions have been made. No prayer for any adjournment to file a reply has been sought for.

Parties have consented that the review application be disposed off on its own merit.

Having heard learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that the writ application being C.W.J.C. No. 12574 of 2019 was heard and disposed off only because the Court was not informed about the aforementioned facts. The submission of learned Senior Counsel for the private respondent nos. 3 and 4 that



learned counsel for the petitioners and the Bank have taken an opportunity and petitioners having tested the Court but failed to obtain an order in their favour, cannot be allowed to take this plea seeking recall of the order, would not be acceptable to this Court.

This Court is of the considered opinion that the conscience of this Court is of paramount importance.

Once the Court understands that had these facts been brought to the notice in course of hearing of C.W.J.C. No. 12574 of 2019 the writ application was required to be transferred to any other Bench after seeking permission of Hon'ble the Chief Justice, any order whatsoever have been passed must be recalled. It is well said that justice should not only be done, it seems to have been done and it is necessary to follow this principle to keep faith of the litigants in the judicial system.

In the case of **Musammat Jamna Kuar vs. Lal Bahadur and Others** reported in (1949) 11 FCR 662 the Federal Court had occasion to take a view on the circumstances under which the order of a Court is to be reviewed. The relevant paragraph reads as under :-

“There can be no doubt that this appeal must be allowed. The mistake as to the items of property regarding which Mst. Jamna Kuar had laid claim is apparent on the face of the record. The trial Judge had clearly stated in his judgment that



Jamna Kuar's claim related to properties 3 to 37 of the Gazette notification. In paragraph 15 of her amended objection petition she had laid claims to all the properties left by Kunj Behari. On the 29th April, 1942, it was admitted by the pleader of the applicants that all these properties related to the estate of Kunj Behari and that so far as the debtors were concerned, they were owners of only two properties mentioned in the Gazette notification. In this situation it would have been appropriate if the High Court had corrected this error on the review petition and saved the appellant the trouble and expense of an appeal to the Privy Council or to this Court. Whether the error occurred by reason of the counsel's mistake or it crept in by reason of an over-sight on the part of the Court was not a circumstance which could affect the exercise of jurisdiction of the Court to review its decision.

(emphasis is mine)

We have no doubt that the error was apparent on the face of the record and in our opinion the question as to how the error occurred is not relevant to this enquiry. A mere look at the trial Court's decision indicates the error apart from anything else."

So far as the principles of review are concerned, those are apparent from the aforesaid judgment of the Hon'ble Federal Court wherein it has been held that whatever be the reason whether the error occurred by reason of the counsel's mistake or it crept in by reason of an over-sight on the part of the Court was not a circumstance which could affect the exercise of jurisdiction of the Court to review its decision. To this Court it appears that it is a case for recall of the judgment dated 30.07.2019 passed in CWJC No.12574 of 2019. Recently in the



case of **Municipal Corporation of Greater Mumbai & Anr.**

Vs. Pratibha Industries Limited & Ors. reported in (2019) 3

SCC 203, the Hon'ble Supreme Court has held as follows:-

“**10.** Insofar as the High Courts' jurisdiction to recall its own order is concerned, the High Courts are courts of record, set up under Article 215 of the Constitution of India. Article 215 of the Constitution of India reads as under:

“**215. High Courts to be courts of record.**—

Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”

It is clear that these constitutional courts, being courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record. This has been recognised in several of our judgments.”

There are catena of decisions on the subject and this Court need not go on recording those judgments for sake of reference. Suffice it to say that what has been brought to the notice of the Court at this stage, had it been informed to the Court at the relevant time, the matter would have been directed to be placed before Hon'ble the Chief Justice for listing before another Bench. Submission of Mr. P.K. Shahi, learned Senior Counsel for the private respondents that the petitioners as well as the Bank are indulged in forum shopping or waiver is liable to be rejected. The fact that learned counsel for the Bank also



accepts that he had missed out to inform the Court is a bonafide statement. The fact that Bank has no objection to the recall of the order is indicating their bonafide. In the opinion of this Court the submission of learned Senior Counsel for the private respondents could not be substantiated and is not fit to be accepted.

In result, this Court recalls its order dated 30.07.2019 passed in C.W.J.C. No. 12574 of 2019 as if the said order would not form part of the record and shall not be referred to for any purpose by the litigants and the parties.

The Review Application is, thus, allowed.

(Rajeev Ranjan Prasad, J)

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