IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 37 OF 2018
IN
WRIT PETITION NO. 98 OF 2018

ACCURATE PIPES AND FITTINGS PVT. LTD., REP. BY POA, GAUTAM ADMANE AND 2 ORS., ... Applicants

Versus

THE EDC LTD., THR. ITS AUT. OFFICER, P.P. BORKAR., ... Respondent

Adv. Russell. R.J. Pinto for the Applicant.

Adv. Ashwin D. Bhobe for Respondent no.1.

Coram:- C. V. BHADANG, J.
Date:- 29th January 2019.

P.C.:

By this application, the original petitioner in Writ Petition no.98/2018 is seeking review of the order dated 21/2/2018, by which the petition was dismissed. The petitioners in the said writ petition had challenged the order dated 6/11/2017 below Exhibit 99 passed by the learned District Judge in Civil Misc. Application no.43/2007 thereby refusing to uphold the preliminary objection to the jurisdiction of the District Judge to entertain the application under sections 29, 30 and 31 of the State Financial Corporation Act, 1951 (Act, for short).

2. It is a matter of record that the respondent /corporation had filed the proceedings under sections 29 to 31 of the Act, for recovery of the loan advanced to the petitioner, somewhere in the year 2007 which was preceded by a notice dated 20/5/1993 whereby the respondent had invoked the provisions of sections 29, 30 and 31 of the said Act and had recalled the entire loan.

3. The Central Government by virtue of the Notification dated 4/1/1993 published on 10/6/1993 under sections 46 of the Act had made the provisions of sections 29, 30 and 31 applicable to the respondent/corporation.

4. The only contention raised in the said writ petition was that the notification cannot operate retrospectively. It was contended that the loan having been advanced in the year 1988 and the notification being of the year 1993, the respondent/corporation could not have taken recourse to the provisions of sections 29 to 31 for the recovery of the loan.

5. A bare perusal of the order dated 21/2/2018 would show that this Court has considered the said contention in the context of the provisions of the section 46 of the Act and has held that sections 29, 30 and 31 of the Act essentially provide for a mode or remedy for recovery of the loan. In short,

this Court came to the conclusion that by virtue of the notification issued and the application of the provisions of sections 29, 30 and 31 of the Act to the respondent/corporation only an additional mode of recovery is provided, which does not affect the substantive rights and liabilities of the parties.

6. I have heard Shri Pinto, the learned counsel for the applicants and Shri Bhobe the learned counsel for the respondents.

7. Shri Pinto, the learned counsel for the applicants submitted that the notification could not operate retrospectively and inasmuch as the loan was advanced prior to the issuance of the notification, the proceedings under sections 29, 30 and 31 of the Act were not competent. I am afraid said ground cannot be considered in a review application. This is because this Court has already considered the said contention and has taken a particular view. The correctness of the said view cannot be examined in a review application as an application for review is not an appeal in disguise, as held by the Hon'ble Supreme Court tin the case of **State of West Bengal and others Vs. Kamal Sengupta and another (2008) 8 SCC 612 and Parsion Devi and others Vs. Sumitri Devi and others (1997) 8 SCC 715.**

It is now well settled that for a review application to succeed the party should be able to show that there is an error apparent on the face of the record which in my considered view the applicant has failed to show.

8. Shri Pinto, the learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of **Govind Das and others Vs. The Income Tax Officer and anr**. **(1976) 1 SCC 906**, which was not cited when the writ petition was decided. Be that s it may, reliance was placed on the observations in para 10 of the judgment which read thus:

> " Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure."

It can thus clearly be seen that what has been held is that unless the terms of a statute provide expressly or by necessary retrospective implication effect should not be given to a statue so as to take away or impair an existing right or create a new obligation or impose a new liability "otherwise than as regards matters of procedure". This Court has already held that applicability of sections 29, 30 and 31 of the Act neither creates any new rights, obligation or liability and only provides for a remedy as to recovery of loan amount which is essentially a matter of procedure. In the circumstances the decision in the case of **Govind Das (supra)** to my mind, cannot come to the aid of the applicant. The application is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

ap/-