

07.01.2021
Sl. No. 27
srm

C.O. No. 500 of 2019

Renu Malhotra

Vs.

Eveready Industries India Limited & Anr.

Mr. Aniruddha Chatterjee,
Mr. Rahul Karmakar,
Mr. A.P. Agarwalla

...for the Petitioner.

Mr. Jishnu Chowdhury,
Mr. Samik Kanti Chakrabarty,
Mr. Vivek Jhunhunwala,
Ms. Debdatta Roy Chaudhury

...for the Opposite Party No.1.

The judgement-debtor in Title Suit No.1097 of 2009 has preferred this revisional application being aggrieved by an order dated December 6, 2018 passed by the learned Civil Judge (Senior Division), 2nd Court at Alipore. By the order impugned, the application for review of the judgment dated March 7, 2014 filed by the petitioner being Misc. Case No.6413 of 2014 was dismissed.

Mr. Chatterjee, learned Advocate appearing on behalf of the petitioner, submits that the learned Court below while considering the application for review failed to apply the principles envisaged under Section 114 read with Order 47 of the Code of Civil Procedure Code. According to Mr. Chatterjee, the learned Court below refused to entertain the application for review on the grounds stated therein, solely, on the misconception that the judgment passed by her

predecessor in office could not be looked into while deciding a review application because the learned Court was not competent to delve into the mind of her predecessor in order to ascertain whether her predecessor had correctly analysed the law and facts in the case while passing the judgment. Mr. Chatterjee further submits that if such logic is accepted then in most cases once a court is transferred or demits office, the subsequent incumbent would never be in a position to entertain any subsequent application for review or otherwise. According to Mr. Chatterjee, the learned Court ought to have disposed of the application for review by entering into the merits of the same and ought to have arrived at a conclusion that the judgment of which a review was sought for did not suffer from any mistake apparent on the face of record. According to Mr. Chatterjee, the learned Court below was rather nervous in entertaining an application for review of a judgment passed by her predecessor.

Mr. Chowdhury, learned Advocate appearing on behalf of the opposite party No.1, vehemently opposed the contention of Mr. Chatterjee and supported the judgment by saying that this Court should not be persuaded by the discussions in the order impugned but, should concentrate only on the last four lines of the order in which the learned Court has observed that mere non-mentioning of a judgment

referred by a party does not imply that her predecessor-in-interest had not applied his or her judicial mind or had not considered the referred judgment while reaching to a conclusion.

Mr. Chowdhury cited the decisions of the Hon'ble Apex Court in the matters of (1) Parsion Debi & Ors. vs. Sumitri Devi & Ors. reported in (1997) 8 SCC 715, (2) Haridas Das vs. Usha Rani Banik (Smt.) & Ors. reported in (2006) 4 SCC 78 and (3) State of West Bengal & Ors. vs. Kamal Sengupta & Anr. reported in (2008) 8 SCC 612.

The crux of the argument of Mr. Chowdhury based on the abovementioned judgements is that a party could not be allowed to challenge an erroneous decision by way of review. According to Mr. Chowdhury, a mistake in a decision just because another view was possible could not be a ground for review even if such a mistake was a mistake of fact or law. The next contention of Mr. Chowdhury is that the scope of review would not permit rehearing of the dispute between the parties.

Heard the learned Advocates for the respective parties. considered the judgements cited by Mr. Chowdhury. I have also considered the order impugned. From the order impugned, it appears that the learned Court below has observed that the petitioner had rightly filed the review petition in Court. That the moot question in review was

whether non-mentioning of judgment referred to by the plaintiff/petitioner during the arguments had amounted to error apparent on the face of record, and that the review application was filed within time. However, while considering whether the application for review should be entertained, the learned Court below observed that any act done by a Judge in his official course of business should be presumed to be correct. If this is the basis for refusal of the application for review then, in that case, no judgment passed by any Court would be subject to challenge before a higher forum. The learned Court below further observed that every Judge had a style of writing his or her judgment and the learned Court could not probe into the mind of her predecessor to understand the reasons which had persuaded her predecessor to pass the judgement. Thereafter the learned Court observed that mere non-mentioning of a decision in the judgment would not imply that her predecessor had not applied his or her judicial mind while reaching a conclusion. The order impugned suffers from incorrect appreciation of law.

Grounds for review is provided for under Order XLVII

Rule 1, of the CPC which is quoted below:

“1. Application for review of judgment. – (1) Any person considering himself aggrieved –

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.”

All that the learned Court ought to have done is applied her judicial mind to assess whether the grounds as set out under Order XLVII Rule 1 existed in the instant case as good grounds for review but instead, the learned Court below has proceeded on the basis that any judgment passed by a learned Judge was presumed to be correct and the successor in office would not be in a position to understand the mind of the Judge who passed the judgment. These are not the considerations while deciding an application for review. The application for review should be strictly adjudicated on the basis of the parameters under Section 114 and Order XLVII of the Code of Civil Procedure. In this case, the same has not been done. The order impugned is, therefore, set aside and quashed.

The learned Court below is directed to rehear the review application in the light of the observations made hereinabove.

The contention of Mr. Chowdhury is accepted to the extent that while deciding a review, rehearing of the entire dispute is not permissible and this Court directs the learned Court below to decide the application for review in terms of the provisions of law and by not permitting the parties to re-argue their entire case. The review application will be considered on its own merits.

As I am not considering the merits of the review application, the decisions cited by Mr. Chowdhury at this stage need not be referred to. These are the decisions which could be considered at the time of hearing of the review application, if the same are referred to.

It is expected that the learned Court below will dispose of the review application within a period of two months from the date of communication of this order.

It is made clear that the parties are not going to pray for unnecessary adjournments before the learned Court below.

This revisional application is, thus, disposed of.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)