

IN THE HIGH COURT OF ORISSA AT CUTTACK

RVWPET No.44 of 2022

Srikanta Charan Mohanty and others* *Petitioners

Mr. Soumya Mishra, Advocate

-versus-

Saraswati Rout and others* *Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

08.08.2022

Order No.

9. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this petition seek for review of judgment and order dated 5th March, 2021 passed in SA No.79 of 1996.
- 2.1 Before discussing the submission made by learned counsel for the parties, it would be profitable to record that assailing the judgment and order dated 5th March, 2021 passed in SA No.79 of 1996, the review Petitioners had moved the Hon'ble Supreme Court in Special Leave Petition (Civil) No.499 of 2022, which was disposed of on 14th the February, 2022 (Annexure-4) with the following order:-

“From a perusal of the impugned judgment, we notice that before the High Court, submissions were made only on one substantial question of law which was considered. Learned senior counsel for the petitioners would, however, point out that there were other points which were raised and which were not considered. If that complaint is true, it is for the petitioners to move the High Court.

With prejudice to such a right, the special leave petition will stand disposed of.”

Accordingly, the present review petition has been filed.

3. Mr. Mishra, learned counsel for the review Petitioners submits that the Second Appeal filed by them was admitted on the following substantial questions of law:-

“(i) Whether the lower Appellate Court committed gross error in not holding that the suit was barred by limitation under Article 59 of the Limitation Act and whether the decision is liable to be set aside on that score?

(ii) Whether the lower Appellate Court committed gross illegality in decreeing the plaintiff's suit in the absence of specific pleading with regard to fraud? And,

(iii) Whether the suit should not have been entertained because of non-payment of ad valorem court-fee for the transaction under the sale-deed?”

But the appeal was decided only on substantial question of law No. (i), as learned counsel for the Appellants confined his argument to the said substantial question only.

3.1 It is his submission that the substantial question of law No.(i) relates to issue of limitation in filing the suit. This Court, taking into consideration the submission made by learned counsel for the parties and discussing the materials available on record remanded the matter back to learned District Judge, Balasore for adjudication of the question of limitation afresh. This Court also confirmed the rest of the findings recorded by learned First Appellate Court.

3.2 It is his submission that if the question of limitation is decided in favour of the Appellants then findings of other issues would require reconsideration in view of Order XLI Rule 25 CPC. Thus, the findings of this Court confirming the findings on other issues rendered by learned First Appellate Authority is not sustainable and in that regard the Court has

committed an error of law apparent on the face of record. Hence, it requires reconsideration.

3.3 It is further submitted that although this review petition is filed pursuant to the liberty granted by the Hon'ble Supreme Court, but it cannot be confined to the submission made before the Hon'ble Supreme Court. The review Petitioners can also raise other issues if available to them to raise in the review petition. The legal right of the Petitioners to file the review petition cannot be confined to the liberty granted by Hon'ble Supreme Court.

3.4 He further submits that, dismissal of the SLP does not amount to merger of the judgment and order passed by this Court with the order passed by the Hon'ble Supreme Court. In support of his submission, he referred to the case law in the case of ***Kunhayammed and others Vs. State of Kerala and another***, reported in (2000) 6 SCC 359, wherein, it is held as under:-

“38. The Review can be filed even after SLP is dismissed is clear from the language of Order 47 Rule 1 (a). Thus the words no appeal has been preferred in Order 47 Rule 1(a) would also mean a situation where special leave is not granted. Till then there is no appeal in the eye of law before the superior court. Therefore, the review can be preferred in the High Court before special leave is granted, but not after it is granted. The reason is obvious. Once special leave is granted the jurisdiction to consider the validity of the High Courts order vests in the Supreme Court and the High Court cannot entertain a review thereafter, unless such a review application was preferred in the High Court before special leave was granted.”

He, therefore, submits that the order passed in the Second Appeal should be reviewed and the review Petitioners should

be given opportunity to make submission on other issues in the event the issue of limitation is answered in their favour.

4. Mr. Mohanty, learned counsel for Opposite Parties (Respondents in the Second Appeal) vehemently objected to the submission made above. It is his submission that the judgment and order passed in the Second Appeal was impugned before the Hon'ble Supreme Court. Perusal of the order under Annexure-4 does not reflect that the review Petitioners had raised the aforesaid ground before the Hon'ble Supreme Court. He further submits that perusal of the review petition clearly suggests that the same has been filed pursuant to the liberty granted by the Hon'ble Supreme Court. While not entertaining the SLP(C), Hon'ble Supreme Court considering the submission of learned counsel for the Petitioners (herein) to the effect that there are '*some other points which were raised and which were not considered*', granted liberty to the Petitioners to raise such issue before this Court. Thus, the scope of review is only limited to the issues which were raised and not answered while adjudicating the Second Appeal.

4.1 Further, in course of hearing of the Second Appeal, learned counsel for the Appellants therein volunteered to confine his argument to substantial question No.(i) only. As such, the findings on other issues recorded by learned First Appellate Court gets confirmed. Taking into consideration the submission of learned counsel for the Appellants in the Second Appeal, this Court has allowed the appeal and remanded the matter back to learned District Judge, Balasore

to adjudicate the issue of limitation only. Thus, there is no illegality or impropriety in the impugned judgment and order itself to be reviewed. As it appears, there is no apparent error on the face of record which warrants interference in the review petition. He, therefore, prays for dismissal of the review petition.

5. Heard learned counsel for the parties and perused the materials on record. On perusal of para-8 of the judgment and order passed in the Second Appeal, it appears that in course of hearing, learned counsel appearing for the Appellants (therein) submitted that *'the appeal may be decided on substantial question of law No.(i) only. If the suit is held to be barred by time, then the other two questions of law need not be decided.'*

5.1 In view of the above, it is clear that learned counsel appearing for the Appellants was conscious of the fact that he was confining his argument on the issue of limitation only and did not press other substantial questions of law framed at the time of admission of the appeal. The other two substantial questions of law relate to other issues framed by learned trial Court. Since the Appellants confined their argument to the substantial question of law with regard to limitation only, this Court proceeded to decide the appeal on the said question of law and recorded its finding. In view of the submissions made by learned counsel for the Appellants therein findings recorded on other issues gets confirmed as not challenged. Mr. Mishra, learned counsel for the review Petitioners made a submission that if the issue of limitation is decided in favour of the

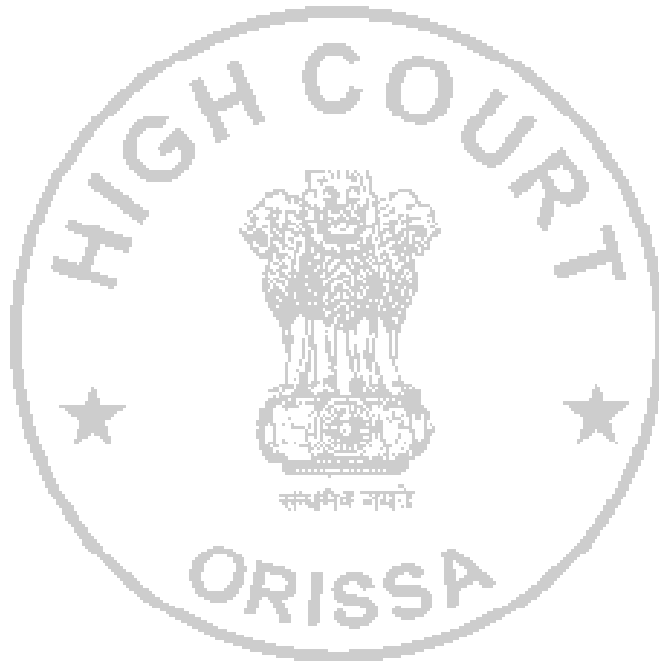
Appellants then the findings on other issues would require reconsideration; otherwise findings on the issue of limitation if recorded in favour of the Appellants would become otiose. This aspect was lost sight of while adjudicating the Second Appeal. Such submission although appears to be reasonable, but cannot be sustained as learned counsel for the Appellants consciously confined his submission to the issue of limitation only and accordingly the appeal was decided on the said substantial question of law only. While disposing of the SLP (C), Hon'ble Supreme Court has also observed so under Annexure-4. On perusal of the review petition, it is clear that it is filed on the basis of the liberty granted by the Hon'ble Supreme Court taking into consideration the submission of learned counsel for the Petitioners therein (review Petitioners herein) to the effect that some points were raised before this Court while adjudicating the Second Appeal and were not considered. Mr. Mishra, learned counsel for the review Petitioners could not point out which of the questions (points) were raised by the Appellants at the time of adjudication of the Second Appeal and not decided. Mr. Mishra, learned counsel rightly pointed out that dismissal of the SLP(Civil) will not amount to merger of this Court's judgment and order passed in the Second Appeal. But, that itself cannot be a ground to review the judgment and order passed in the Second Appeal, if no case to that effect is made out.

6. In view of the discussions made above, this Court is of the considered opinion that there is no apparent error on the face of record in the judgment and order sought to be

reviewed. No ground to review the judgment and order is also made out. Accordingly, the review petition being devoid of any merit stands dismissed.

7. In view of dismissal of the Review Petition, interim order dated 11th April, 2022 stands vacated.

(K.R. Mohapatra)
Judge



s.s.satpathy