

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present :

THE HON'BLE JUSTICE PARTHA SARATHI SEN

C.O. No.246 of 2022

Smt Basanta Mehta & Anr.

Vs.

Mrs Mitali Law & Ors.

For the Petitioner :

Mr. Piush Chaturvedi, Adv.

Mr. Anujit Mookherji, Adv.

For the O.Ps. . 1 & 4.:

Mr. Ajoy Krishna Chatterjee, Sr. Adv.

Mrs. Shohini Chakraborty, Adv.

Miss. Prajaaini Das, Adv.

Last Heard on:

: 20.02.2023

Judgment on:

: 24.02.2023

Partha Sarathi Sen, J. : –

1. The instant revisional application as filed under Article 227 of the Constitution of India arises out of the order dated November 26, 2021 as passed by Learned Additional District Judge, 11th Court at Alipore, District-South 24 Pargana in Miscellaneous Case No. 648 of 2017 as filed under Section 114 read with Order 47 Rule-1 of the Code of Civil Procedure praying for a review of the judgement and decree as passed by Learned Additional District Judge, 1st Court, Alipore, District South 24 Pargana. By the impugned judgement Learned Reviewing Court dismissed the said Misc.

case. The petitioner of the said Misc. case felt aggrieved and thus preferred instant revisional application.

2. For effective disposal of the instant revisional application, the facts leading to filing of Misc. case Nos. 648 of 2017 are required to be discussed in a nutshell.

3. The opposite parties/plaintiffs filed Title Suit No. 395 of 1982(subsequently renumbered as Title Suit No. 148 of 1993) as against the present revisionists/defendants/judgement debtors in the Court of Learned Civil Judge (Jr. Division), 3rd Court, at Alipore subsequently transferred to the Court of Learned Civil Judge (Jr. Division), 1st Additional Court, at Alipore praying for eviction of the present revisionists/defendants from the suit property, for recovery of possession, for permanent injunction and for other ancillary reliefs. By a judgement and decree dated 29/06/2006 the said Title Suit was dismissed on contest. Challenging the said judgement and decree of the trial court, the opposite parties/plaintiffs herein filed Title Appeal No. 241 of 2006. The said Title Appeal was however allowed on contest by the first appellate court reversing the judgement and decree of dismissal as passed by the learned trial court.

4. The present revisionists/defendants/judgement debtors took the matter to this Hon'ble Court in second appeal. However at the time of hearing on the point of admission of the said second Appeal, as per prayer of the appellants that is the present revisionists herein, the said second appeal was dismissed by treating the same as withdrawn. At the time of withdrawal of the said second appeal, it was contended on behalf of the present revisionists that on account of discovery of new materials namely; the letters

written by the present revisionists requesting the opposite parties herein to renew the lease in exercise of the option for renewal of lease reserved for them and the reply of the lessors' learned Advocate to such request, the present revisionists/judgement debtors intend to file a review application before the first appellate court instead of proceeding with the said second appeal.

5. As discussed hereinabove, after the withdrawal of the said second Appeal, the present revisionists/judgement debtors filed a review application which was registered as Miscellaneous Case No. 648 of 2017 which by the impugned judgement has been dismissed.

6. In support of the instant revisional application, Mr Chaturvedi, learned advocate for the revisionists/judgement debtors draws attention of this court to the photocopy of the registered deed of lease dated 3rd March, 1979 as executed by and between the parties to the instant lis in respect of the suit property. It is contended by the learned advocate for the revisionists that initially the said deed of lease as executed in favour of the present revisionists was for a period of 30 years with option on the part of the lessee to renew the said lease for two successive occasions each for 30 years more.

7. It is contended further by the learned Advocate for the revisionists/judgement debtors that though Title Suit No. 148/1993 was filed under section 111(g) of the transfer of property Act but learned first appellate court while disposing Title Appeal No. 241/2006 came to a finding that since during the pendency of the said lis, the period of lease has come to an end by efflux of time, the opposite parties/plaintiffs are entitled to get

relief under section 111(a) of the said Act and thus allowed the said appeal and thereby decreed the said suit that is Title Suit No. 148/1993.

8. Drawing attention to annexure-G at page 143 and annexure-H at page 146 of the instant revisional application, it is contended on behalf of the present revisionists/ defendants that during the pendency of the said appeal, the present revisionists/defendants by issuing their Advocate's letter dated 19/02/2009 exercised their option to renew the said lease which was however declined by the present opposite parties/plaintiffs by issuing their Advocate's letter of reply dated 30/6/2009. It is argued further that since even after exercise of due diligence, the said letters could not be produced before the first appellate in Title Appeal No. 241/2006, Learned Reviewing Court while passing the impugned judgement ought to have considered that the said two letters might be vital evidence for the present revisionists in the said appeal for which the judgement as passed in Title Appeal No. 241/2006 can be reviewed by allowing Miscellaneous Case No. 648 of 2017. It is further contended on behalf of the present revisionist that the learned Reviewing court while disposing the aforementioned Miscellaneous case for review also ought to have considered that the present revisionists being the laymen were completely dependent upon their Learned Advocate who for the best reasons known to him did not produce the said two letters before the learned first appellate court at the time of hearing of Title Appeal No. 241/2006. It is further argued on behalf of the present revisionists that the mistake on the part of the present revisionists, if there be any, in not filing the said two letters before the first appellate court are purely unintentional and the learned reviewing court while passing the impugned judgement thus

failed to consider the importance of the said two letters for reviewing the judgement of the first appellate court afresh.

9. Drawing further attention to the impugned judgement, it is contended by Mr Chaturvedi, Learned Advocate for the revisionists that the Learned Reviewing Court also failed to consider that in the review application as filed before the Reviewing Court, sufficient explanation has been given by the present revisionist in filing the said review application beyond the period of limitation and thus there is no further requirement of filing a separate application for condonation of delay under the provisions of section 5 of the Limitation Act. It is thus contended that learned trial court while passing the impugned judgement misconstrued the provisions of section 3(1) of the Limitation Act.

10. On behalf of the present revisionist, reliance was placed upon the following reported decisions:

(a) Union of India & others -vs- West Coast Paper Mills Ltd & another reported in (2004)2 SCC 747.

(b) Bhagmal & others -vs- Kunwar Lal & others reported in (2010) 12 SCC 159.

(c) Sri Kallol Das -vs- Md. Abdar Gazi & others reported in 2014 SCC Online Cal 18723.

11. It is thus submitted that it is a fit case for dismissal of the instant revisional application by setting aside the impugned judgement.

12. Per contra, Mr Chatterjee Learned Senior Advocate for the opposite party Nos. 1 to 4/plaintiffs also draws attention of this court to the photocopy of the lease deed as executed by and between the present

revisionists and the opposite party Nos.1 to 4/plaintiffs. Attention of this Court is also drawn to the provisions of order 47 Rules 1 and 4 of the Code of Civil Procedure. Drawing attention to the photocopy of the review petition as filed before the learned trial court, it is argued that within the four corner of the said review application no explanation has been given by the present revisionists with regard to the delay in filing the said review application before the Reviewing Court. It is thus argued that Reviewing Court while passing the impugned judgement made no error of fact or of law in holding that the said review application is barred under the law of Limitation and the said Court thus rightly applied the provisions of section 3(1) of the Limitation Act while passing the impugned judgment.

13. It is argued by Mr. Chatterjee, Learned Senior Advocate for the opposite parties/plaintiffs that neither in the review application nor in the instant application for revision the alleged date of discovery of the said two letters have been mentioned and thus Learned Reviewing Court is absolutely justified in disbelieving the case of the present petitioners. It is further submitted that the said two letters were all along in the possession of the present revisionists and thus they are not entitled to get any relief as prayed for.

14. It is further argued by Mr. Chatterjee, Learned Senior Advocate for the opposite parties/plaintiffs that conjoint perusal of the provisions of Order 47 Rules 1 & 4 of the Code of Civil Procedure prescribes that the words **‘for any other reason’** being one of the grounds for review as incorporated by the legislatures in Order 47 Rules 1 of the Code of Civil Procedure is not to be considered independently but the same has to be interpreted along with

other grounds as mentioned in the said Rule. It is also argued by him that Rule-4 of the Order 47 also makes it mandatory for the party seeking review to prove the allegations for getting success in an application for review. It is thus submitted that it is a fit case for dismissal of the instant revisional application.

15. In support of his contention, Mr. Chatterjee, Learned Senior Advocate for the opposite parties/plaintiffs placed his reliance upon the following reported decisions :-

- (i) ***Aribam Tuleshwar Sharma -vs- Aribam Pishak Sharma & others*** reported in ***(1979) 4 SCC 389***.
- (ii) ***Hriday Kanta Kotal -vs- Jogesh Chandra Mandal*** reported in ***AIR 1959 Cal 150***.
- (iii) ***The State of West Bengal & another -vs- Confederation of State Government*** reported in ***AIR 1959 Cal 150***.

16. This Court has meticulously perused the entire materials as placed before this Court including the impugned judgement. This Court has given its due consideration over the submissions of the learned advocates for the contending parties. In considered view of this Court for effective adjudication of the instant revisional application a look to the legislative provisions dealing with review is necessary.

17. Section 114 of the Code of Civil Procedure and Order 47 of the self same Code deals with the subject of review. Section 114 of the Code of Civil Procedure reads as under:-

“114. Review. - Subject as aforesaid, any person considering himself aggrieved—

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

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

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

Order 47 Rule 1 of the Code of Civil Procedure is as under:-

“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 to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.”

Order 47 Rule 4 of the Code of Civil Procedure is as under:-

"4. APPLICATION WHERE REJECTED.

(1) Where it appear to the Court that there is not sufficient ground for a review, it shall reject the application.

*(2) **Application where granted-** Where the Court is of opinion that the application for review should be granted, it shall grant the same:*

Provided that-

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation."

18. This Court also considers that a look to the provision of Section 3 of the Limitation Act is very much necessary and the same is reproduced hereunder in verbatim:-

"Section 3 in The Limitation Act, 1963

3. Bar of limitation.—

(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act— (2) For the purposes of this Act—"

(a) a suit is instituted— (a) a suit is instituted—"

(i) in an ordinary case, when the plaint is presented to the proper officer; (i) in an ordinary case, when the plaint is presented to the proper officer;"

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and (ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and"

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator; (iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;"

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted— (b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—"

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded; (i) in the case of a set off, on the same date as the suit in which the set off is pleaded;"

(ii) in the case of a counter claim, on the date on which the counter claim is made in court; (ii) in the case of a counter claim, on the date on which the counter claim is made in court;"

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

19. Keeping in mind the aforementioned legislative provisions of law this Court proposes to deal with the applicability of Section 3(1) of the Limitation Act in the instant lis in view of the fact the learned trial court while passing the impugned judgement has come to a finding that the review application as filed before him was hit under Section 3(1) of the Limitation Act and thus dismissed the said review application on that score. As discussed above Mr. Chaturvedi, learned advocate for the revisionist/judgement debtor strongly contended that while passing the impugned judgement, learned Reviewing Court took a hyper technical view that since a petition under Section 5 of the Limitation Act praying for condonation of delay has not been filed in Miscellaneous Case No. 648 of 2017, the said review application has been hit under Section 3(1) of the Limitation Act. According to Mr. Chaturvedi, Learned Advocate for the revisionists/judgement debtors, Learned Reviewing

Court ought not to have taken such hyper technical view since in the review application itself, proper and appropriate explanation has been furnished as to what prevented the present revisionists/judgement debtors to present and/or file the review application beyond the period of limitation. On perusal of the review application which has been registered as Misc. Case No.648 of 2017, it appears to this court that in the said review application though the present revisionists had categorically mentioned as to what prompted them to file the said review application after withdrawal of the second appeal from this Hon'ble Court but as rightly pointed out by Mr. Chatterjee, Learned Senior Advocate for the opposite parties/plaintiffs, that no explanation at all has been given by the present revisionists for not filing the review application before the learned Reviewing Court within the period of limitation. Such being the position, this Court is constrained to hold that the review application as filed before the learned Reviewing Court is clearly hit by Section 3(1) of the Limitation Act and thus this Revisional Court upholds the findings of the learned Reviewing Court in this regard. Accordingly, this Court finds that the reported decisions as cited from the side of the present revisionists would be of no help to them.

20. In order to decide as to whether the learned Reviewing Court is at all justified to dismiss the review application on its merit, it also appears to this Court that answer to such question of law can easily be obtained on conjoint reading of the provisions of Order 47 Rule 1 read with the proviso of Rule 4(2) of the Code of Civil Procedure.

21. It appears to this Court that the legislatures while enacting the provisions of the aforesaid Rules of Order 47 of the Code of Civil Procedure

in their own wisdom expressed that review of judgement can only be entertained on account of discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the person seeking relief 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. It is pertinent to note herein that the legislatures most consciously incorporated the said condition in a disjunctive manner i.e. to say that if any of the conditions mentioned above can be satisfactorily shown to the court before whom prayer for review is made the said Reviewing Court can grant relief as prayed for. However, it is to be borne into mind that the Legislatures most consciously incorporated the third condition viz; '*for any other sufficient reason*' as the last option which is to read and interpreted along with other two previous conditions of Rule-1 subject to the strict proof thereof in accordance with the proviso clause of Rule 4(2) of the Order 47 of the said Code.

22. Coming to the factual aspects of this case, it reveals that it has been contended by Mr.Chaturvedi , learned advocate for the revisionist that a letter dated 19.02.2009 as written by learned advocate for the present revisionists addressed to the present opposite parties and the letter of reply dated 30.06.2009 as issued by the learned advocate for the opposite parties in favour of the learned advocate for the present revisionists are most vital piece of evidence which even after exercise of due diligence could not be produced before the learned First Appellate Court during the pendency of Title Appeal No.241 of 2006. In considered view of this Court the argument

as advanced by Mr. Chaturvedi, is devoid of any merit. On scrutiny of the entire materials as placed before this Court it reveals to me that during the pendency of the Title Appeal No.241 of 2006 learned advocate for the revisionists *after taking instruction of his clients* i.e. the present revisionists herein issued the letter dated 19.02.2009 exercising the option of the present revisionists to review the lease in question for 30 years more which was however declined by a reply letter dated 30.06.2009. This Court finds that since letter dated 19.02.2009 was issued by the learned advocate for the revisionists *after taking instruction of his clients* i.e.; the revisionists herein it is practically impossible to believe the said two letters were discovered by the present revisionists after disposal of Title Appeal no.241 of 2006 and that even after the exercise of due diligence by them they could not produce those two letters before the Learned First Appellate Court prior to disposal of Title Appeal no.241 of 2006. On perusal of the proviso of Rule 4 of Order 47 Code of Civil Procedure it appears that it is the mandate of the legislatures that no application for review should be entertained on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge without **strict** proof of such allegation. On perusal of the review application as filed before the learned Reviewing Court it appears that the present revisionist before the learned Reviewing Court has miserably failed to prove that those two letters were discovered by them subsequent to the disposal of the Title Appeal no.241 of 2006 and such finding being a factual finding, this Court in exercise of power under Article 227 of the Constitution of India is not inclined to interfere with the same in absence of gross illegality and irregularity.

23. In view of the discussion made hereinabove this Court finds no merit in the instant application and accordingly the instant revisional application is dismissed. Consequently the impugned judgement dated 26th November, 2021 as passed by Learned Additional District Judge, 11th Court in Miscellaneous Case no. 648 of 2017 is hereby affirmed.

24. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Partha Sarathi Sen, J.)