

23.08.2024
Item Nos.18-19
gd/ssd

CPAN/905/2024
ASHOK KUMAR MUKHERJEE
VS
SAMIRAN DUTTA CMD CHAIRMAN-CUM-
MANAGING DIRECTOR EASTERN COALFIELDS
LIMITED AND ANR.
in
WPA/6249/2022
ASHOK KUMAR MUKHERJEE
VS
COAL INDIA LIMITED AND ORS.
with
RVW/126/2024
THE CHAIRMAN-CUM-MANAGING DIRECTOR
EASTERN COAL FIELDS LIMITED
VS
ASHOK KUMAR MUKHERJEE AND ORS.
IA NO: CAN/1/2024, CAN/2/2024

Md. Idrish

..for the Petitioner.

Mr. Bijoy Kumar

..for the Review Applicant.

Re: CAN 2 of 2024

1. In view of sufficient reasons for the delay having been made out, CAN 2 of 2024 is allowed, thereby condoning the delay in filing the review application.

Re: RVW 126 of 2024

2. Affidavit of service filed today be kept on record.

3. The review application is now taken up for hearing.

3. Learned counsel for the review applicant submits that the order dated February 21, 2024 passed in WPA 6249 of 2022 was obtained by suppression of material facts, amounting to fraud on the court.

4. Learned counsel places reliance on an order dated March 1, 2008 passed in WP 27539(W) of 2007 where a coordinate Bench had observed that this court did not have jurisdiction take up the matter on the ground of territorial jurisdiction.

5. It is submitted by learned counsel for the review applicant that the self-same cause of action was agitated several times by the petitioner and/or his wife, on all of which occasions the matters were dismissed, sometimes on the ground of jurisdiction and at others for default.

6. Learned counsel also places reliance on a judgment of the Supreme Court in Civil Appeal No.1736 of 2008 annexed at page 33 of the review application where it was observed by the Supreme Court inter alia that this court does not have territorial jurisdiction to take up such issues, since the coal mines in question are situated at Dhanbad, which is outside the territorial jurisdiction of the State of West Bengal. A Division Bench judgment is also relied on in such context, which is annexed at page 38 of the review application.

7. Such contentions are disputed by learned counsel for the respondents.

8. The limited scope of review is whether an error apparent on the face of the record has been committed or whether there has been discovery of some new material subsequent to the order being passed or any other ground akin thereto.

In the present case, however, the order dated February 21, 2024 was merely in the nature of implementation of an earlier order of a coordinate Bench dated September 06, 1999 passed in WP 767 of 1999. By the said order, the respondent/review applicant was directed to consider the issues involved.

9. Upon consideration thereof, pursuant to a communication dated September 28, 2000, the General Manager of the concerned area of the respondent/ECL specifically indicated that the release of coal D.O. to the extent of 5728 MT will be on the basis of free consignee and free destination. It was also recorded in the order dated February 21, 2024 that the said communication further mentioned that bank drafts are to be issued on local banks and only after proper verification by the Finance Department, the delivery order may be issued. This court went on to record that hence, it transpires that subsequent to the direction of the coordinate Bench, the respondent authorities had taken a decision to release the balance coal in favour of the petitioner and as such there cannot be any further impediment in the respondents doing so.

10. From such perspective, the writ petition was disposed of with a direction on the respondent nos.2 and 3 to ensure that the balance amount of coal as prayed for by the petitioner in terms of prayer (a) of the writ petition was released in favour of the petitioner at the earliest, within the timeline fixed therein.

11. It is conspicuous that despite service, the respondents had not been represented on February 21, 2024 in WPA 6249 of 2022.

12. Thus, in the said order, there was no adjudication on facts or merits of the claims or counter-claims between the parties on the relevant issue. The order merely recorded the concession given by the respondents themselves by a communication dated September 28, 2000 through the General Manager of the ECL with regard to release of the balance coal to the petitioner, on the premise of an earlier order of this Court which had attained finality.

13. Hence, the plea taken in the review application that facts were to be decided in the writ petition on merits by taking evidence does not stand on good ground.

14. With regard to the allegation of fraud made from the Bar by learned counsel for the review applicant, a careful scrutiny of the memorandum of review reveals that there is not even a whisper of any allegation of fraud, although in Ground IV it has been

mentioned that the cardinal principle of law is that the writ petitioner shall approach the writ court with clean hands and that the writ petitioner had obtained the order by misleading this court on suppression of material facts. Contrary to the principles embodied In Order VI Rule 4 of the Code of Civil Procedure, no particulars of fraud or misrepresentation have been pleaded in the entire memorandum of review.

15. Thus, I do not find that the review applicant has made out a case either of the order under review being palpably vitiated by fraud or there being any error apparent on the face of record, particularly since the order dated September 6, 1999 passed in WP 767 of 1999 has attained finality and the order under review was merely premised on the same and the subsequent concession given by the respondents themselves was also on the basis of the said order.

16. In such view of the matter, I do not find that the review applicant has made out a case within the four corners of Order XLVII of the Code of Civil Procedure to entitle the applicant to a review of the order dated February 21, 2024.

17. Thus, RVW 126 of 2024 is dismissed on contest without any order as to costs. CAN 1 of 2024 is also disposed of accordingly.

Re: CPAN 905 of 2024

18. In so far as the contempt application is concerned, the respondents are directed to file their affidavit(s)-in-opposition within three weeks from date; reply, if any, shall be filed within a week thereafter.

19. The contempt application shall be listed on September 27, 2024 for hearing.

(SABYASACHI BHATTACHARYYA, J.)