

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

IA.No.1 of 2024

in

CRP.No.5479 of 2017

ORDER:

This Review Petition is filed seeking to review the order dated 14.06.2024 passed by this Court in CRP.No.5479 of 2017.

Heard Sri Karnam Ramesh, learned counsel for the review petitioners and Sri J.Suresh Babu, learned counsel for the respondents.

Learned counsel for the petitioners principally contended that the judgment of the Hon'ble Apex Court in ***W.B. Essential Commodities Supply Corporation Vs. Swadesh Agro Farming & Storage Pvt Ltd and another¹***, relied upon by him, was neither referred to nor discussed in the Order passed in CRP.No.5479 of 2017. According to him, the said judgment squarely applies to the present case. He further submitted that the order under review suffers from error apparent on the face of record as the same is contrary to the law laid down by Hon'ble Apex Court in **W.B. Essential Commodities Supply Corporation's case (cited supra)**. He further submitted that as per Order 21 Rule 11(2) CPC

¹(1999) 8 SCC 315

enclosing certified copy of decree is not mandatory and an Execution Petition can be filed even without enclosing a copy of the decree and therefore, the time taken for drawing up decree by the Court cannot be excluded while computing the limitation for execution of decree. He further submitted that in the present case, admittedly, the suit was decreed on 20.09.1994 and EP was filed on 16.11.2007, which is clearly beyond 12 years from the date of judgment and this aspect was not properly appreciated by this Court in the order passed in Revision and prayed to review the said order.

Learned counsel for respondents submitted that this Court, on proper appreciation of the facts and circumstances of the case and the ratio/proposition laid down by various other High Courts as well as the Hon'ble Apex Court, has rightly allowed the Revision and petitioners have failed to point out any error apparent on the face of order under review. He further submitted that non-discussion and non-consideration of the rulings referred to and relied upon on behalf of a party is not a ground for filing review and further, the grounds on which the present Review is filed are untenable and therefore, the Review is liable to be dismissed.

In **W.B. Essential Commodities Supply Corporation's** case (cited supra), the decree sought to be executed is a money decree and the Court has observed that delay in drawing up and signing the decree did not cause any prejudice to the decree-holder and that there is no nexus between late drawing up of decree by the Court and the filing of the Execution Petition by the decree-holder after the expiry of limitation and therefore, the decree holder does not have benefit of exclusion of time taken for obtaining certified copy of decree, much less to exclude the time taken by the Court in drawing up and signing the decree.

However, a three-Judge Bench of the Hon'ble Supreme Court in ***Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and another***², has interpreted Order XLI Rule 1 CPC and also Section 12 sub-section (2) CPC and held as hereunder:-

"The position of law under Order 41 Rule 1, is absolutely clear. Under the said rule every appeal has to be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in that behalf, and has to be accompanied by a copy of the decree appealed from, and of the judgment on which it is founded. Rule 1

² 1960 SCC Online SC 149

empowers the appellate court to dispense with the filing of the judgment but there is no jurisdiction in the appellate court to dispense with the filing of the decree. Where the decree consists of different distinct and severable directions enforceable against the same or several defendants the Court may permit the filing of such portions of the decree as are the subject-matter of the appeal but that is a problem with which we are not concerned in the present case. In law the appeal is not so much against the judgment as against the decree; that is why Article 156 of the Limitation Act prescribes a period of 90 days for such appeals and provides that the period commences to run from the date of the decree under appeal. Therefore there is no doubt that the requirement that the decree should be filed along with the memorandum of appeal is mandatory, and in the absence of the decree the filing of the appeal would be incomplete, defective and incompetent."

Further, the Hon'ble Supreme Court also observed as follows:-

"If at the time when the appeal is presented before the appellate Court, a decree in fact had not been drawn up by the trial Court; in such a case if an application has been made by the appellant for a certified copy of the decree, then all that can be said against the appeal preferred by him is that the appeal is premature since a decree has not been drawn up, and it is the decree

against which an appeal lies. In such a case, if the office of the High Court examines the appeal carefully and discovers the defect, the appeal may be returned to the appellant for presentation with the certified copy of the decree after it is obtained."

The proposition/ratio laid down in the aforesaid judgment squarely applies to the present case. Therefore, in the light of the said judgment of the Hon'ble Supreme Court, the contention of the learned counsel for review petitioners that the respondent could have filed EP even without enclosing a copy of the decree holds no water and further, even his contention regarding non-exclusion of time taken for drawing up decree by the Court for computing the period of limitation falls to ground.

It is a common practice/Rule that a judgment of three-Bench Judge always prevails over the judgment of two-Bench Judge. Therefore, the judgment of the Hon'ble Supreme Court in ***Jagat Dhish Bhargava's*** case (cited supra) prevails over the judgment rendered in the case of ***W.B. Essential Commodities Supply Corporation*** (cited supra).

As regards the contention of learned counsel for petitioners that non-consideration of the rulings relied upon by him in the

order under review is concerned, it is relevant to note the observation made by a Division Bench of High Court of Allahabad at Lucknow Bench in *M/s Docket Car Systems Lko, through partner-Pankaj Kumar Agarwal Vs. Union of India, through Secretary, Ministry of Micro, Small and Medium Enterprises, New Delhi and others*³ to the effect that non-consideration of a judgment cannot be a ground for review as that would lead to substituting the view already taken by the Court. In the light of the said observation, the aforesaid contention of learned counsel for petitioners is untenable.

In the light of the foregoing reasons, this Court holds that the review petitioner has miserably failed to point out any illegality, much less any error apparent on the face of the order, which necessitates to review the same and accordingly, the review application is liable to be dismissed.

In the result, the Review Application is dismissed. No costs.

LAXMI NARAYANA ALISHETTY, J

Date:29.10.2025
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³ 2023 AHC-LKO-82069-DB