

CONSTITUTIONAL WRIT

Present: **The Hon'ble Justice Debasish Kar Gupta**

*C.A.N.5298 of 2009
arising out of*

*W.P. No. 15578(W) of 1994
With
C.O. No. 20687(w) of 1996*

Judgment On: 31-3-2010.

*The Board of Trustees of the Port of Calcutta & Anr.
versus
Tushar Kanti Maity & Ors.,*

POINTS:

RECALLING OF ORDER-Court required to adopt a long drawn process of reasoning for examining possibility of tenancy-An error on the face of record or discovery of new and important matter or evidence may be a ground for review of a final order-Recalling of the final order of the Division Bench, whether justified-Constitution India, Article 226

FACTS:

This is an application for recalling of the final order passed by a Division Bench of this court considering the submissions made on behalf of the parties. Upon consideration of the submissions made on behalf of the respective parties on merit the final order was passed on the basis of a finding that the tenancy in question had been in existence.

HELD:

This court is required to adopt a long drawn process of reasoning for examining the possibility of taking a reverse view regarding the tenancy under reference. That is the province of a court of appeal. In this application it is not possible on the basis of the settled principles of law that fishing

out or searching of an alleged error in a judgment is not permissible for recalling and or reviewing of the final order. Para-7

It must be kept in mind that an error on the face of record or discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, may be a ground for review of a final order. Para-8

CASES CITED:

- 1) Satyanarayan Pandey Vs. State of W. B., 2009(2) CHN 860
- 2) Maruti Real Estate Pvt. Ltd. & Anr. Vs. Life Insurance Corporation of India & Ors., 2008(1) CHN 442
- 3) Satyana Laxmi Narayan Hegdera Vs. Manikaayuran Bhavanappa Tirumale, AIR 1960 SC 137.

For Applicant : Mr. Hirok Mitra,
Mr. S. Bose.

For Opposite Party : Mr. T. B. Roy.

THE COURT:

1. This is an application for recalling of the final order dated November 18, 2008 passed by this court. The above order was passed considering the submissions made on behalf of the parties and the operative portion of the aforesaid order is quoted below:

“Therefore, the above writ applications are disposed of by setting aside the order dated March 14, 1996 passed by the respondent no.4 in C.O. No.20687(w) of 1996 (Annexure “A” at page 37 to the above writ application).

The writ petitioner is granted liberty to pay off the outstanding dues of rents at the revised rate by 36(thirty six) equal monthly instalments commencing from December 15, 2008 together with the current rent at the prevailing statutory rate subject to raising of the above bills by the respondent authority on the month of November, 2008.

The petitioner is further directed to pay the above arrear rent together with interest @ 6% p.a. from the respective due dated subject to the final decision of the Apex Court in SLP being (Civil) No.8668 of 2007. In the event of success of the respondent authority in the above Special Leave Petition, the respondent authority will be at liberty to take steps against the petitioner in accordance with law for realization of the interest on the aforesaid arrear amount.

In default of payment of any one instalment or the interest thereon or any part thereof or any current rent by 15th of every month, the respondent authority will be at liberty to take steps in accordance with law for eviction of M/s. Haldia Automobiles.

There will, however, be nor order as to costs.

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

2. It is submitted by the learned counsel appearing for the applicants/respondents that the above order was passed on consideration of an order dated February 12, 2007 passed by a Division Bench of this court in the appeal bearing A.P.O. No.367 of 2006. But facts and circumstances of the above matter were not similar to those involved in these writ applications. According to him, the subject matter involved in the appeal under reference was payment of outstanding rents at revised rate by instalments together with interest. But in these writ application the tenancy of the writ petitioner had expired long back. According to him the subject matter involved in SLP(Civil) No.8668 of 2007 was not similar to that of the instant writ applications. Payment of accrued interest @ 6% per annum was under challenge before the Hon’ble Supreme Court in the matter under reference. According to him, a fresh tenancy was created as a consequence of the order dated November 18, 2008 while disposing the writ applications.

3. The decisions of **Satyanarayan Pandey Vs. State of W. B., reported in 2009(2) CHN 860 and Maruti Real Estate Pv. Ltd. & Anr. Vs. Life Insurance Corporation of India & Ors., reported in 2008(1) CHN 442** are relied upon by the learned counsel appearing for the applicants in support of his submissions.

4. On the other hand, the above submissions are vividly opposed by the learned counsel appearing for the writ petitioner. It is submitted by him that no objection was raised by the learned counsel appearing for the applicants at the time of passing the order dated November 18, 2008 on the ground that the facts and circumstances involved in these writ applications were identical to those of the appeal bearing APO no.367 of 2006. It is also submitted by him that the writ applications were disposed of by a speaking order. Therefore, this application cannot be entertained due to non-compliance of the provisions of chapter X of the Appellate Side Rules. It is also submitted by him that by virtue of an interim order dated September 7, 1993 passed in one of these writ application bearing C.O. No. 1557(w) of 1994, the petitioners had been paying rents for the plots of land in question at the old rate at the time of passing the order dated November 18, 2008. Therefore, it was not correct that the subject matter involved in the appeal bearing A.P.O. No.367 of 2006 was not identical to those of these writ applications. It is also submitted by him that the order under reference cannot be reviewed on the ground of discovery of new and important matter or evidence which, after exercise of due diligence, was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made or that there was error apparent on the fact of record. According to him the power of review is not to be confused with the power to examine a decision on merits.

5. The learned counsel appearing for the petitioner relies upon the decision of **Aribam Tuleshwar Sharma, reported in AIR 1979 SC 1047** in support of his above submissions.

6. I have given my thoughtful considerations to the submissions made on behalf of the respective parties. At the very outset the moot question which falls for consideration of this court is the maintainability of this application. It appears from the final order dated November 18, 2008 that upon consideration of the submissions made on behalf of the respective parties on merit the above order was passed on the basis of a finding that the tenancy in question had been in existence.

7. Now, this court is required to adopt a long drawn process of reasoning for examining the possibility of taking a reverse view regarding the tenancy under reference. That is the province of a court of appeal. In this application it is not possible on the basis of the settled principles of law that fishing out or searching of an alleged error in a judgment is not permissible for recalling and or reviewing of the final order dated November 18, 1988.

8. It must be kept in mind that an error on the face of record or discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, may be a ground for review of a final order. Reference may be made to the decision of **Satyana Laxmi Narayan Hegdera Vs. Manikaayuran Bhavanappa Tirumale, reported in AIR 1960 SC 137**.

9. Therefore, none of the grounds set forth in this application constitutes a ground for review of the final order dated November 18, 2008.

10. The decision of **Maruti Estate Pvt. Ltd.** is not applicable in the instant case in view of the distinguished facts and circumstances of the case as discussed hereinabove. Similarly the decision

of **Satyanaya Panda(supra)** has no manner of application in the instant matter in view of the distinguishable facts and circumstances as discussed hereinabove.

11. This application stands dismissed.

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

13. Urgent Photostat certified copy of this order, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard

(Debasish Kar Gupta, J.)