

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

Present :

Hon'ble Justice Moushumi Bhattacharya.

IA NO: GA 1 of 2023

In

RVWO 34 of 2023

Radha Bhattad

vs

Rashmi Cement Limited

For the petitioner : Mr. Suddhasatva Banerjee, Adv.
Mr. Dyutimoy Paul, Adv.
Mr. Soumyadip Panda, Adv.

For the respondents : Mr. Soumabho Ghose, Adv.
Mr. Rishav Dutt, Adv.
Mr. Siddhartha Sharma, Adv.
Ms. Shalini Basu, Adv.

Last heard on : 11.08.2023

Delivered on : 01.09.2023.

Moushumi Bhattacharya, J.

1. The present application has been filed for review of a judgment delivered by the Court on 26.6.2023. The said judgment was passed in AP 327 of 2023 which was an application for appointment of an arbitrator under section 11 of

The Arbitration and Conciliation Act, 1996. The AP was allowed and disposed of by appointing a former judge of this Court to act as the Sole Arbitrator. The respondent (review applicant) was represented and heard in the proceedings.

2. The grounds of review contained in the Memorandum are essentially on the point that the judgment suffers from an error apparent on the face of the record and also that the review applicant has discovered new and important evidence which was not within his knowledge and could not be produced at the time of delivery of the judgment despite due diligence.

3. Learned counsel for the respondent in the present application (petitioner in AP 327 of 2023) raises a point of maintainability of the present application on the ground that the applicant cannot seek review of the judgment as the 1996 Act does not contain any provisions for review of orders passed by a Court under the Act including under section 11 of the said Act. Counsel also submits that the applicant must satisfy the conditions of Order XLVII Rule 1 of The Code of Civil Procedure, 1908 which have also not been satisfied in this case. Counsel relies on several decisions to urge that the 1996 Act is a complete Code and does not provide for review. Counsel further seeks to draw a distinction between the power of recall and of review to urge that the High Court can exercise its plenary jurisdiction to recall its order but that the same cannot be construed to confer the power to review unless the concerned statute specifically provides for it.

4. Learned counsel appearing for the review applicant (respondent in the AP who suffered the order) contests the above view to say that Article 215 of the Constitution vests the High court with the power to correct its records which would also include the power of review its judgment and orders.

5. The view of the Court is stated in the following paragraphs.

6. Article 215 of the Constitution of India declares the High Courts to be Courts of record and is set out below :

“215. High Courts to be courts of record.- Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. ”

7. In *M.M Thomas v. State of Kerala; (2000) 1 SCC 666*, one of the issues before the Supreme Court was whether the power to review a decision rendered under the Kerala Private Forests (Vesting and Assignment) Act, 1971 could have been exercised in the absence of any of the conditions specified in section 8-C of the said Act. The other issue was whether the High Court has the power to review its own decision rendered in an appeal filed under the Act. The Supreme Court came to the view that the High Court is a Court of records as envisaged under Article 215 of the Constitution and therefore has inherent powers to correct the records. The Supreme Court proceeded to hold that;

“A court of Record involves all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The

High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law.”

8. *M.M. Thomas* relied on *Halsbury’s Laws of England (4th Edn., Vol. 10, para 713)* which makes a distinction between superior and inferior Courts in connection with jurisdiction. The explanation on the distinction is reproduced below.

“Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while noting is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court. An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary. The High Court, for example, is a court of universal jurisdiction and superintendency in certain classes of actions, and cannot not be deprived of its ascendancy by showing that some other court could have entertained the particular action.”

9. *M.M. Thomas* placed reliance on an earlier decision of the Supreme Court in *Naresh Shridhar Mirajkar v. State of Maharashtra; AIR 1967 SC 1* and *M.V Elisabeth v. Haewan Investment & Trading (P) Ltd.; AIR 1993 SC 1014* both of which held that the High Courts in India are superior Courts of records and have inherent plenary powers. Paragraph 17 of the Report in *M.M. Thomas* concludes that it is only proper that the plenary powers of the High Court would include the power of review relating to errors apparent on the face of the records.

10. In *Municipal Corporation of Greater Mumbai v. Pratibha Industries Limited*; (2019) 3 SCC 203, the Supreme Court relied on *M.M. Thomas* and on *Shivdev Singh*; AIR 1963 SC 1909 wherein Article 226 of the Constitution had been invoked to declare that there is nothing in Article 226 to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction in order to prevent miscarriage of justice or to correct grave and palpable errors committed by it. In *Municipal Corporation of Greater Mumbai*, the Supreme Court considered the issue of recalling an order passed under section 9 of The Arbitration and Conciliation Act, 1996 but expanded its view to include the argument of review in similar situations.

11. A Division Bench of this Court in *Accord Advertising Pvt. Ltd. v. Airports Director, The Airports Authority of India*; MANU/WB/1919/2019 relied on *Shivdev Singh*. *M.M. Thomas* as well as *Municipal Corporation of Greater Mumbai* to reject the argument that a Court which passes an order in an appeal under section 37 of the 1996 Act cannot review its own order since the power is expressly excluded under the 1996 Act. The Division Bench opined although the 1996 Act is a complete Code, the power of review is not restricted by the provisions of the Act and the order can indeed be reviewed if it conforms to the requirements of Order XLVII Rule 1 of the Code of Civil Procedure. In *Hindustan Construction Company Ltd. v. State of Maharashtra (Review Petition No. 2 of 2013 in Arbitration Appeal No. 6 of 2007 in Arbitration Application No. 44 of 2003)*, a Single Bench of the Bombay High Court came to the same view,

namely, that the High Court has plenary powers to correct any apparent error in respect of any orders passed by the High Court.

12. The objection to the maintainability of the present application is primarily based on the distinction between review and recall of an order and also the necessity of conforming to the conditions under Order XLVII Rule 1 of The Code of Civil Procedure which stipulates the threshold benchmark for allowing a review application to go through the gates. The first objection with regard to the distinction of review and recall fails as the Supreme Court in *M.M Thomas* clearly included apparent errors noticed by the High Court in respect of the order passed by the High Court within its competence as a superior Court of record. The second objection requires a separate paragraph for discussion.

13. It is important to demarcate the source of invocation of the power of review and the power to enter into a substantive review of the order on merits. Article 215 of the Constitution declares High Courts to be Courts of records. Being Courts of records, the High Courts are invested with inherent powers to correct the records. The term "Courts of records" does not simply mean keepers of records but that the High Courts have an obligation, indeed a duty, to maintain correct records within its jurisdiction in accordance with law. The power to correct orders, including where there is an apparent error on the face of the record, falls within the plenary powers of the High Court as a Court of record. The power under Article 226 of the Constitution, although emanating

from a different source, reinforces the power as held in *Shivdev Singh* where the Supreme Court specifically held that there is nothing in Article 226 to preclude a High Court from exercising the power of review as a Court of plenary jurisdiction for preventing miscarriage of justice.

14. Therefore, this Court is of the view that Article 215 can be invoked for exercising the power to review the judgment passed by this Court on 26th June, 2023. The High Court, in exercise of its plenary powers, cannot be fettered by the limitations of the 1996 Act in respect of review or be hemmed-in by the strictures of Order XLVII Rule 1 of The Code of Civil Procedure at the stage of allowing the application to enter through the gates. The first, that is invocation of the powers under Article 215 of the Constitution is a question of maintainability which is answered in the affirmative; the second that is Order XLVII Rule 1 of The Code of Civil Procedure is a question on merits which will determine the review-ability of the order within the contours of Order XLVII Rule 1 of The Code of Civil Procedure.

15. This Court is therefore of the view that the present application succeeds in clearing the threshold test and entering the arena of review. The Court will consider whether the application succeeds on the merits and the tests of Order XLVII Rule 1 once the matter is taken up for hearing.

16. RVWO 34 of 2023 is therefore held to be maintainable. The parties shall be at liberty of mentioning the matter for hearing at an early date.

Urgent photostat certified copies of this judgment, if applied for, be supplied to parties upon fulfilment of requisite formalities.

(Moushumi Bhattacharya, J.)