

Videocon Industries Limited Through ... vs Ram Raj Bhandari & Ors on 2 February, 2023

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA 454/2022

VIDEOCON INDUSTRIES LIMITED THROUGH ITS RP & ANR.

..... Appe

Through: None
versus

RAM RAJ BHANDARI & ORS.

..... Respon

Through: Mr. C.S. Yadav, Advocate for
applicant in REVIEW PET. 34/20

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

% 02.02.2023 CM APPL. 5036/2023 (Exemption) Exemption allowed subject to just exceptions.

The application stands disposed of.

1. The instant review petition under Section 114 read with Order XLVII of the Code of Civil Procedure, 1908 has been filed on behalf of respondents no. 1 and 2 in the captioned petition (hereinafter "applicants"), seeking review of the judgment passed on 23rd December 2022 in RFA 454/2022, whereby the appeal preferred by the appellants was allowed and the judgment dated 21st March 2022 passed by the Trial Court was set aside.

2. Learned counsel appearing on behalf of the applicants submitted that vide judgment dated 23rd December 2022, the suit before the Trial Court was restored. Certain facts delineated by the appellants in the original appeal, which were the very basis of the suit, discuss the correspondences and transactions between the parties, however, it is submitted that such disputes do not require any rigorous trial by the Civil Court and hence, there is nothing to be adjudicated upon and re-appreciated by the Trial Court.

3. It is submitted that the judgment under review referred to Section 241, 242, 244, 420, 424 and 425 of the Companies Act, 2013 whereby vide powers of the National Company Law Tribunal (hereinafter "NCLT") have been discussed, while also observing that the NCLT is vested with inherent powers along with powers to punish for contempt. It is submitted that as per Section 59 of the Companies Act, 2013 the NCLT has jurisdiction not only to deal with rectification but all

questions including incidental and peripheral questions raised with regard to rectification for the purpose of deciding the legality of such rectification. It is contended that, in light of such provisions, the questions of law and disputes between the parties can be settled by the NCLT.

4. It is further submitted that the appellants were entitled to file a case under aforesaid provisions of the Companies Act, 2013 before the NCLT. Section 430 of the Companies Act, 2013 expressly bars the Civil Court to exercise its jurisdiction in the instant case.

5. Learned counsel submitted that the parties to the appeal claiming their ownerships were shareholders of TCL and even after liquidation, the shares which were tangible properties remained and the concerned parties could claim their respective rights. Any dispute with regard to the tangible shares could be well settled by the NCLT. Hence, the parties, especially the appellants, were not remediless.

6. Therefore, it is submitted that judgment under review is apparently erroneous on the face of record and hence, is liable to be reviewed by this Court.

7. Heard the learned counsel for the applicant and perused the review petition preferred by the applicants.

8. The power of review conferred upon this Court is provided for under Section 114 and Order XLVII of the Code of Civil Procedure, 1908. The same are reproduced as under for reference:-

"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 XLVII "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...."

"4. Application where rejected.--

(1) Where it appears 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"

9. Therefore, the position of law is clear that review is available on limited grounds including the following, i. discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed.

ii. mistake or error apparent on the face of the record.

iii. for any other sufficient reason.

10. The Hon'ble Supreme Court in Aribam Tuleswar Sharma vs. Aibam Pishak Sharma & Ors., (1979) 4 SCC 389, while discussing the scope of review held as follows:-

"3. It is true as observed by this Court in Shivdeo Singh v. State of Punjab that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But there are definitive limits to the exercise of the power of review. The power of review may be exercised on the 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; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be court the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate."

11. Further, in Parsion Devi and others Vs. Sumitri Devi & Ors., (1997) 8 SCC 715, the Hon'ble Supreme Court, while elaborating upon the scope of Order XLVII, held as under:-

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise"

12. It is not the case of applicants that there has been discovery of new and important facts or issues. On the contrary, the applicants are delving into the process of reasoning and arguments to give weight to thier averments in the review petition. The powers of review are not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise. The learned counsel for the applicants has pleaded that there are errors apparent on the face of the record, however, has not been able to show the same by way of the grounds raised in the review petition.

13. This Court, after careful and thorough consideration of the grounds raised on behalf of the applicants in the review petition as well as during the course of hearing, finds that the applicants have failed to show sufficient cause for review of the judgment in review. This Court decided the question of jurisdiction in favour of the Civil Court, while observing the principle and interpretation under Section 9 of the Code of Civil Procedure, 1908, after considering the facts, disputes and issues between the parties as well as the position of law prevailing. Therefore, this Court does not find any cogent reason to allow the instant review petition.

14. Accordingly, the instant review petition stands dismissed.

CHANDRA DHARI SINGH, J FEBRUARY 2, 2023 dy/ms