



Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO. 6 OF 2024**

IN

COMPANY APPLICATION NO. 3 OF 2023.

NATIONAL AUTO ACCESSORIES LTD.,
(IN LIQUIDATION) THR. IFCL LTD.,
ACTING AS THE LIQUIDATOR ... Applicant.
VS
SANTOSH KANTA ASSOLDEKAR AND
ANR. ... Respondents

Ms Amira Razaq, Advocate for the applicant.
Mr Shivraj Gaonkar, Advocate for the respondents.

CORAM: B. P. DESHPANDE, J
RESERVED ON 21st July 2024
PRONOUNCED ON : 5th July 2024

ORDER.

1. Heard Ms Razaq, learned counsel for the applicant and Mr Gaonkar, learned counsel for the respondents.
2. This is an application for review of the order passed by this Court on 1.3.2024 in Company Application No. 3 of 2023.
3. Ms Razaq would submit that in view of the memorandum of settlement between 126 workers represented by Union, settlement was arrived at as full and final settlement of all the dues, wherein it is mentioned that such settlement is towards full and final settlement of legal or other claims between the parties. She would therefore submit

that such an aspect remained to be properly considered by this Court while deciding the Company Application no. 3 of 2023 and there is a mistake apparent on the face of the record.

4. She places reliance in the case of ***Burroughs Wellcome(I) Ltd Vs Jagannath Namdeo Patil***,¹ and more particularly paragraph nos. 4 and 11. She also placed reliance in the case of ***Automotive and Allied Industries(Private) Ltd. Vs Regional Provident Fund Commissioner and others***,² which is the decision of Division Bench and more particularly on paragraph no. 4, to buttress her submission that once settlement is arrived at as full and final settlement of all legal and other dues, said employees/workmen are not entitled to raise any dispute and more so regarding suspension allowance prior to settlement. Ms Razaq would submit that the respondent by filing proceedings before the Industrial Court under Section 33-C(2) of the Industrial Disputes Act(“the Act” for short) claimed suspension allowance, which is impermissible as they are been paid all the dues in full and final settlement. She claims that order dated 1.3.2024 passed by this Court failed to consider this settled proposition of law and therefore such error needs to be corrected.

1 2005 (4) Mah.L. J 57

2 1994 -1 L.L.N. 580

5. Per contra Mr Gaonkar appearing for the respondent firstly submits that there is no error apparent on the face of the record and only because some decisions were not cited at the relevant time, it cannot be a ground for review. He submits that the applicant is now trying to re-argue the entire matter only on the basis of the decisions cited now.

6. Mr Gaonkar while placing reliance in the case of ***Dokka Samuel Vs Dr. Jacob Lazarus Chelly***,³ and relying upon paragraph 4 would submit that review cannot be sought only because some decisions were not cited by the parties at the time of arguing the main matter.

7. Rival contentions fall for determination.

8. It is a settled proposition of law that the scope in a review petition is very limited and could be allowed only if there is error apparent on the face of the record.

9. Company Application No. 3 of 2023 was filed by the applicant against the order passed by the Labour Court Panaji in a proceedings under Section 33-C(2) of the Act. Respondent filed such proceedings against the applicant who is in liquidation. Application

3 (1997)4 SCC 478

filed by the respondent is for recovery of suspension allowance. Applicant preferred an application for dismissal of such proceedings on the ground that a settlement was arrived at between the workmen and the applicant company wherein all the dues of the workmen were settled and paid. Such settlement is towards full and final settlement of the claim of all the workmen and therefore separate proceedings for recovery of suspension allowance and that too prior to the period of settlement needs to be rejected. It is also claimed that such claim raised by the respondent is clearly beyond the award/settlement and it is impermissible.

10. While deciding such application filed by the applicant, this Court, in a detailed order and by referring to decisions in the case of the ***Central Bank of India vs P. S. Raja Gopalan***⁴, observed that if the money or benefit claimed by the workmen on basis that the right already exists and that right has been denied, Labour Court is entitled to consider such aspects.

11. In the case of ***Burroughs Wellcome(I) Ltd*** (supra), the learned Single Judge of this Court was dealing with a case of voluntary retirement of an employee expressly declaring that they shall have no claim or any benefit arising out of the dispute pending now or which may arise in future against the employer. Letter

⁴ AIR 1964 SC 743

referred by the workmen clearly show that workmen has received all the amount in full and final settlement of his dues/claims on his voluntary retirement and he have no claim pending or in future of any nature whatsoever against the company.

12. The above decision is squarely distinguishable from the observation of the Apex Court in ***Central Bank of India*** (supra) and more particularly paragraph no.19 of the said decision. Thus, only because such decision was not cited earlier, cannot be a ground for review.

13. In the case of ***Automotive Allied Industries*** (supra) the Division Bench of this Court was dealing with a case that the dispute between the director and the founder members which was resolved by filing consent terms wherein clause 8 referred to that the party agree and declare that the amount payable by the defendants in the manner herein above provided for are in full and final settlement and satisfaction of all claims of plaintiffs against the defendants including the claim for compensation for loss of office or otherwise howsoever.

14. On such circumstances, Division Bench of this Court observed that dispute between the parties was settled as full and final settlement of their dues and therefore no further claim could have been raised including provident fund or otherwise.

15. However, the above decision will again not help the applicant since the decision of the Apex Court in the case of ***Central Bank of India***(supra) is basically with regards to award and application filed under section 33-C(2) of the Act.

16. The matter in hand would clearly go to show that an application was filed by the respondent before the Labour Court for claiming their suspension allowance, which was not the subject matter of the settlement or award.

17. In sum and substance, contention raised by the applicant and more particularly relying upon the two decisions referred above, cannot be considered as a ground for review, as held by the Apex Court in the case of ***Dokka Samuel*** (supra) and more particularly in paragraph 4. An omission to cite an authority of law is not a ground for reviewing the prior judgment on the precise saying that there is an apparent mistake or error on the face of the record.

18. Even otherwise decisions relied on behalf of the applicant are clearly distinguishable and since this Court has relied on the decision in the case of ***Central Bank of India*** (supra) which is the decision of the Apex Court, there is no case made out for review of the decision passed by this Court on 1.3.2024.

19. For all the above reasons, review application stands rejected.

B. P. DESHPANDE, J