

Dilip Kumar Vs. Samim Anwar and ors.

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Court : Jharkhand

Decided On : Jan-18-2002

Reported in : II(2002)ACC483; 2002(50)BLJR576

Judge : V.K. Gupta, C.J. and; D.N. Prasad, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 114

Appeal No. : Civil Review No. 79 of 2000 (R)

Appellant : Dilip Kumar

Respondent : Samim Anwar and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : V. Shivnath,; A.K. Sahani, Anita Sinha and; A.L. Topno

Judgement :

ORDER

The Court

1. The respondent No. 6 has been served notice but no one appears on his behalf.
2. Through the medium of this Review Application, the petitioner seeks the review of the order dated 25th July, 2000 passed by the L.P.A. Bench in L.P.A. No. 217 of 2000(R) which was filed by the petitioner against the judgment of the learned

Single Judge delivered on 1-5-2000 in C.W.J.C. No. 2930 of 1999(R). From a reading of the order dated 25-7-2000 passed by the L.P.A. Bench, it becomes clear that this order is a non-speaking order. For locating any error apparent on the face of the record, therefore, we have to look to the order of the learned Single Judge passed on 1-5-2000.

3. Undoubtedly what was under challenge before the learned Single Judge was an order dated 26-9-1998 granting route permits in favour of respondents No. 4 and 5 (in the writ application) ignoring the objections of the writ petitioner. In the final

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dated 1-5-2000 passed by the learned Single Judge, a reference was made to an earlier order dated 10-4-2000 which he actually quoted verbatim therein. Based on the aforesaid order dated 10-4-2000, the learned Single Judge in the order dated 1-5-2000 (which was the subject matter of challenge in the Letters Patent Appeal) took a view that the writ petitioner had suppressed and concealed the material fact about his representation having been disposed of by the Transport Authority and had, instead, stated in the writ Court that without considering and disposing of his representation or taking the same into account, the Transport Authority had granted route permits in favour of respondents No. 4 and 5. What was, therefore, made a subject matter of an issue by the learned Single Judge was as to whether the petitioner's objection to the grant of route permits in favour of respondents No. 4 and 5 was considered or not considered by the Transport Authority.

The stand of the petitioner before the Writ Court was that was not considered and without considering the same route permits in favour of respondents No. 4 and 5 were granted. The learned Single Judge, however, appeared to be of the view that the petitioner's objection was in fact considered by the Transport Authority and only after such consideration, route permits were issued/granted. For this the learned Single Judge appears to have relied upon the order passed by the Transport Authority on 26-2-2000. He, therefore, was of the view that the writ petitioner had made a false statement, concealed this material fact and, therefore, was guilty. The following observations made by him in the course of the judgment dated 1-5-2000 are apposite:

'Even on the last date when the matter was heard, the learned Counsel for the petitioner did not bring to the notice of this Court about the fact that the petitioner was heard subsequently on the objection and the petition was disposed of on 26-2-2000.'

4. Thus holding the petitioner guilty of such concealment, the writ petition was disposed of (virtually it was dismissed) by directing the Transport Authority to cancel the permit to the writ petitioner (as also of respondent No. 5 he was also held guilty of making a false statement in the Court, with which of course we are not concerned in this petition). This apart, the petitioner was burdened with cost of Rs. 10,000/-. It is submitted that there is an error apparent on the face of the judgment as also on the face of the record of the case.

5. What was under challenge before the writ Court was an order dated 26-9-1998 passed by the Transport Authority granting route permits in favour of respondents No. 4 and 5. In that order it was clearly mentioned and observed that no objections were received against such grant of permits to respondents No. 4 and 5. The petitioner's grievance before the writ Court was that he had objected to the grant of permits to respondents No. 4 and 5 but without considering his objection, permits were granted. The learned Single Judge however, returned a finding that the petitioner had misled this Court because his objections were considered by the Transport Authority (as per the order passed on 26-2-2000). If the route permits were granted on 26-9-1998, how could the objection be considered and disposed of on 26-2-2000 when the order dated 26-9-1998 itself spelt out that no objection was ever received with respect to grant of route permits to respondents No. 4 and 5 is a question and fact which appears to have escaped the attention of the learned Single Judge. The explanation offered by Mr. V. Shivnath, appearing for the petitioner is that what was considered and disposed of on 26-2-2000 was another objection filed by the petitioner with respect to the timings of the departure and arrival of the vehicles. Not the objection with respect to the grant of route permits in 1998 to respondents No. 4 and 5.

6. It appears that on the aforesaid basis the writ petition was dismissed. The petitioner's route permit was ordered to be cancelled and the petitioner was

burdened with costs.

7. The petitioner invokes the extraordinary jurisdiction of the writ Court by exercising his right under Article 226 of the Constitution for issuance of an appropriate Writ, direction or Order. If he feels that the judgment delivered by the Writ Court in his case is erroneous, on account of some error of law or fact on the face of the record or the order itself, Section 114 of the Code of Civil Procedure permits him to apply for review of such a judgment and on entertaining such an application, it becomes the duty of Writ Court to look into grievances of such a petitioner and if it ultimately finds that indeed there is some error of law or fact in the judgment which is apparent on the face of the judgment or on the face of the record, it should not hesitate to correct such an error. Failure to do so is always likely to cause miscarriage of justice.

8. In the present case, however, we are faced with a very peculiar dilemma. What has been sought to be reviewed by the petitioner in this case is the judgment passed by the Division Bench. As we have noticed at the outset, the Division Bench has passed a non-speaking order. Since no reason or ground for dismissing the appeal is discernible from the Division Bench judgment, we have to perforce fall based upon the judgment of the learned Single Judge and for the sole purpose of deciding whether any error of law or fact exists or not. In effect and substance, therefore, what might be required to be reviewed is the judgment/order dated 1-5-2000 passed by the learned Single Judge and not the judgment of the division Bench. Since, therefore, it is the judgment of the learned Single Judge, which, in effect and substance, ultimately becomes the subject matter of the present Review Application, it would be in the fitness of things if the matter is remitted back to the learned Single Judge for considering the petitioner's application for review.

9. In this order, we have not made any definite or positive observation. We have only made some indirect comments for the limited purpose of prima facie indicating the *raison d'être* of the petitioner's Review Application. We have the matter for the consideration of the learned Single Judge but by only observing that if the learned Single Judge finds that the petitioner's contentions have some merit

then, perhaps, he may consider reviewing the order dated 1-5-2000.

10. In the result, therefore, we, sitting in this Division Bench and technical seized of this Review Application with respect to an order passed by the L.P.A. Bench deem it proper and appropriate to transfer the Review Application to the learned Single Judge for disposal by him, by treating the same in effect and substance as Review Application with respect to the order dated 1-5-2000 passed by him in C.W.J.C. No. 2930 of 1998 (R). The learned Single Judge, accordingly, shall dispose of the Review Application on merits and, in accordance with law, and uninfluenced of any earlier order passed by him, including the order dated 29-6-2000 passed in the modification petition by the writ petitioner.

11. We order, accordingly. No order as to costs.

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