

...appellant. Vs. the official Liquidator and Others

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Court : Kolkata

Decided On : Nov-18-2014

Judge : Subhro Kamal Mukherjee

Appellant : ...appellant.

Respondent : The official Liquidator and Others

Judgement :

Form No.J(2) IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction
Original Side Present: The Hon'ble Justice Subhro Kamal Mukherjee And The
Hon'ble Justice Asim Kumar Mondal A.C.O.No.130 of 2013 A.C.O.No.140 of 2013
A.P.O.No.728 of 1998 C.A.No.468 of 1997 C.P.No.302 of 1989 Spark Dealers
Private Limited Appellant.

Versus The official Liquidator and others Respondents.

For the appellant/respondent: Mr.Sakti Nath Mukherjee, Mr.Kishore Dutta,
Mr.A.C.Kar, Mr.D.Mukherjee, Mr.R.Roy Chowdhury.

For the petitioner: Mr.Soumendra Nath Mookerjee, Mr.Joy Saha, Mr.Sakya Sen,
Mr.Subhankar Nag, Mr.Lalratan Mandal.

For Spark DealeRs.Mr.Jayanta Mitra, Mr.Ratnanko Banerjee, Mr.Saunak
Sengupta.

For Ontime Cargo and Couriers PVT.Ltd.: Mr.Mr.Mr.Mr.Judgment on: November 18, 2014.

Samit Talukdar, Srijib Chakraborty, Kuldeep Mallick, Aasish Choudhury.

Subhro Kamal Mukherjee, J.: We are invited to decide an application for review filed under A.C.O.130 of 2013 by Omnitech Engineers (India) Private Limited seeking review of our order dated June 12, 2013 passed in A.P.O.No.728 of 1998.

Another application for recalling was filed, which was registered as A.C.O.140 of 2013, seeking for recalling of our aforesaid order.

By order dated June 12, 2013, we dismissed the aforementioned appeal being A.P.O.No.728 of 1998 for non-prosecution as the learned advocate-on-record for the appellant came and submitted that he has been instructed not to press the appeal.

There was an application by Omnitech Engineers (India) Private Limited seeking for its addition in the appeal.

We felt that as the appeal was dismissed for non-prosecution, the application for addition of party became infructuous and we, thus, dismissed the said application for addition of party as infructuous.

Mr.Soumendra Nath Mukherjee, learned senior advocate, appears and submits that in view of the ongoing disputes between the Jain Group and the Singhania Group, that is, the promoters of the company- in- question, the learned advocate-on-record for the appellant, ought not to have withdrawn the appeal.

Mr.Mukherjee draws our attention to the case of Dr.

Satya Charan Law and others versus Rameshwar Prosad Bajoria and others reported in AIR1950 Federal Court 133.

Mr.Mukherjee submits that the directors of the company are the only persons, who can conduct litigation in the name of the company.

When they are themselves the wrong-doers against the company and have acted mala fide or beyond their powers and their personal interest is in conflict with their duties, they cannot take steps to seek redress for the wrong.

The majority of the shareholders must in such a case be entitled to take steps to redress the wrong.

Mr. Jayanta Mitra, learned senior advocate, appears in support of the application for recalling and he, also, submits that the order needs to be recalled and the appeal needs to be re-heard.

Spark Dealers Private Limited filed this appeal in 1998.

It appears that there were disputes and differences between the promoters, namely, the Jain Group and the Singhanian Group.

Question cropped up as to who would control the affairs of the company.

The earlier division bench, in the judgment and order dated January 21, 2000, recorded that there were disputes and differences between the two groups claiming control over the management and the affairs of the company.

Such disputes and differences could not be the subject matter for adjudication in these proceedings.

Opportunities, however, were granted to the respective learned advocates of either of the groups, that is, the Jain Group and the Singhanian Group, to make their submissions before the Honble Company Judge in the matter, which had been directed to be placed before the Honble Company Judge.

By judgment and order dated December 10, 2002, a division bench of this Court admitted the application for review against the said judgement and order dated January 21, 2000 and directed that the appeal would be re-heard on its own merits.

During the pendency of the appeal, Omnitech Engineers (India) Private Limited filed an application for addition of party alleging that they had acquired 49 (forty

nine) per centum of share in the company and, thus, they should be added as a party in the said appeal.

The learned advocate for the appellant, through whom the memorandum of appeal was presented, came up before us on June 12, 2013 and submitted before us that he has been instructed not to proceed with the appeal.

Mr.Sakya Sen, the learned advocate for Omnitech Engineers (India) Private Limited, opposed the prayer for withdrawal and sought for the addition of the said company.

We expressed our opinion that as the appellant was not willing to proceed with the appeal, we could not force him to pursue the appeal on merits.

Thus, we dismissed the appeal as not pressed, but liberty was granted to the parties to approach before the appropriate forum for agitating their grievances.

This application for review and the application for recalling are filed principally on the ground that our attention was not drawn to the order dated January 21, 2000, whereby the division bench of this Court permitted the learned advocates of both the groups to make their submissions.

It is not correct that such order was not placed before us.

We have considered the order while passing the order dated June 12, 2013.

We found that the learned advocate-on-record is not willing to proceed with the appeal and the ongoing disputes and differences between the two groups and the new company, that is, Omnitech Engineers (India) Private Limited, could not be the subject-matter of adjudication in the appeal.

The power to review is a restricted power.

Such power authorises the Court or the tribunal, which passed the judgment sought to be reviewed, to look over through the judgment not in order to correct it or improve it because some material, which ought to have been considered, had escaped its consideration or failed to be placed before it by any other reason.

The Court cannot under cover of it arrogate to itself the power to decide the case over again.

We cannot, by admitting this application for review, convert an appeal into a proceeding for relief in cases of mismanagement or oppression, inter se, the promoters group, namely, the Jain Group and the Singhania Group and a new comer, that is, Omnitech Engineers (India) Private Limited.

A review petition has a limited purpose and cannot be allowed to be an appeal in disguise with a clear distinction between an erroneous decision and an error apparent on the face of record.

A party is not entitled to seek a review of the Courts judgment merely for the purpose of rehearing and for a fresh decision of the case.

Departure from the normal principle that the Courts judgment is final would be justified only when compelling or substantial circumstances make it necessary to do so.

Krishna Iyer, J.

in Northern India Caterers (India) Limited versus Lt.

Governor of Delhi reported in (1980) 2 SCC167 held: - A plea for review, unless the judicial view is manifestly distorted, is like asking for the moon. We do not find any merit in the application for review or in the application for recalling.

There is no infirmity due to error apparent on the face of record.

Thus, we dismiss the application for review filed under A.C.O.130 of 2013.

We, also, reject the application for recalling filed under A.C.O.140 of 2013.

We, however, direct the parties to bear their respective costs in these applications.

(Subhro Kamal Mukherjee J.) Asim Kumar Mondal, J.

I agree.

(Asim Kumar Mondal, J.)

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