

**HIGH COURT OF TRIPURA
AGARTALA
REV PET NO.7 OF 2023**

Indian Oil Corporation Limited(IOCL),
A Central Govt. Undertaking,
Having its registered office at,
G-9, Ali Yaburjang Marg,
Bandra East, Mumbai-400051.

..... **Petitioner(s)**

Vs.

1. Tripur India Pvt. Ltd.,
Madhya Banamalipur, East Thana Road,
Agartala, West Tripura-799001

..... **Respondent(s)**

For the Petitioner(s) : Mr. S.S. Dey, Sr. Advocate.
Mr. S.S. Debnath, Advocate.
Ms. A. Chakraborty, Advocate.

For the Respondent(s) : Mr. S.M. Chakraborty, Sr. Advocate.
Mrs. A. Pal, Advocate.

Date of hearing : 19.04.2023

Date of delivery of
Judgment & Order : 03.05.2023.

Whether fit for reporting : YES.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER

This present revision application is filed aggrieved
by the order dated 14.12.2022 passed in CRP No.94 of 2022.
The said CRP No.94 of 2022 has been filed under Article 227 of

the Constitution of India aggrieved by the order dated 06.09.2022 passed by the Civil Judge(Sr. Div), West Tripura, Agartala, Court No.1 in case No.CM(J)31 of 2022 arising out of T.S. No.59 of 2003. By the impugned order, the learned trial court rejected an application filed by the petitioner under Order IX, Rule 7 CPC on the ground that it was filed belatedly and the delay was not explained.

2. The facts which fell for consideration in the said CRP is that the trial Court rejected the application of the petitioner of the said CRP i.e., the respondent in the review petition under Order IX, Rule 7 CPC viewing that if at this belated stage, he is allowed to enter into the proceeding, the entire proceeding would start from the very beginning causing further delay in the disposal of the case which is pending from 2003. For a better appreciation of the case, it would be appropriate to reproduce the following extract of the order of the learned Civil Judge (Sr. Div):- सत्यमेव जयते

".....Thus, from the above, it is evident that numerous dates passed by and the case reached the advanced stage of trial and it was at this stage, the instant petition was filed by the defendant petitioner. No reason for the delay of more than seven years is properly explained by the petitioner. In the cause list, in normal course the details of each days order is not mentioned. Only the next date is mentioned and the reason for fixing the next date. It was the duty of the petitioner to check as to what order was passed in the case. But the petitioner failed to do so and file the petition at an earlier stage. Moreover, even if it is assumed that on 14.03.20214 the defendant – petitioner did not have knowledge about the ex parte order passed by my Ld. Predecessor against him, but this does not explain the reason behind his lack of knowledge about the order dated 14.03.2014 on

27.09.2014 when written objection filed by him was rejected and, thereafter, on 18.03.2021 when OP was prevented from cross-examining the plaintiff's witnesses. But at that stage also the defendant petitioner did not file any petition for setting aside the exparte order dated 14.03.2014. Rather he waited till 29.01.2022 to file the instant petition. This shows that the delay in filing this petition by the defendant petitioner was intentional and no reason has been cited by the petitioner for his failure to file the instant petition at an earlier occasion when repeatedly he was prevented at various stages firstly from filling written objection and thereafter from cross-examining the Pws. In no manner this intentional delay and failure of the petitioner can be condoned. If the petition is allowed at this final stages of the case, then severe prejudice will be caused to the OP as well as the other parties to the suit. Situated thus, I am of the reasoned opinion that the petitioner has failed to assign good cause for previous non appearance. So the petition filed by the petitioner is hereby rejected....."

3. Thereafter the petitioner in the CRP i.e. the respondent in the review petition approached this Court for setting aside the impugned order dated 06.09.2022 passed by the Trial Court [Civil Judge, Sr. Div. West Tripura(Court No.01)] in case No.CM(J)31 of 2022. The Court vide order dated 14th December 2022 disposed of the said CRP No.94 of 2022 in the following terms:-

"[14] The trial court is directed to allow the petitioner (defendant No.11) to cross-examine the witnesses whose evidence has already been recorded. He will also be allowed opportunity to adduce evidence, if he so desires. However, towards expenses to be incurred for reproducing the witnesses already examined for cross examination by the petitioner, this Court is of the view that it would not be unfair to ask the petitioner to deposit a sum of Rs.7,000/- (Rupees seven thousand) as cost before the trial court within a period of 10 (ten) days from today which shall be given to the plaintiff through their counsel. The trial court shall make endeavour to dispose the case as expeditiously as possible, preferably within a period of 6(six) months from today. The parties are directed to cooperate for such time bound disposal of the case."

4. Aggrieved thereby the present review application has been filed by the petitioner-IOCL i.e the respondent in the said CRP on the following pleaded grounds:-

" i. For that the Hon'ble Court perhaps failed to notice that there are many parties in the case, and in a civil proceeding all the necessary/formal parties in subsequent proceedings , but the petitioner dropped others from being parties. This way of course a basic defect not pointed out at the hearing, however a defect in form can be pointed out now also.

ii. For that Hon'ble Court was remiss to note that the application was under Article 227 of the Constitution, High Court's power under which has been repeatedly reminded by the hon'ble Supreme Court that it is " limited to seeing that the tribunal functions within the limits of its authority. The principal grounds for interference would be-

i. want or excess of jurisdiction.

ii. failure to exercise jurisdiction.

iii. violation of procedure or dis-regard of principles of natural justice."

iii. For that the power of Superintendence under Article 227 is of an administrative as well as Judicial Nature. But, this power of Superintendence is to be exercised most sparingly and only in appropriate cases" in order to keep the sub-ordinate courts within the bounds of their authority and not for correcting errors" because the law declared by the High Court shall bind its sub-ordinate Court as well as the administrative tribunals of the State."

5. Heard Mr. S.S. Dey, learned Sr. counsel assisted by Mr. S.S. Debnath, learned counsel appearing for the petitioner as well as Mr. S.M. Chakraborty, learned Sr. counsel assisted by Mrs. A. Pal, learned counsel appearing for the respondent.

6. Mr. S.S. Dey, learned Sr. counsel assisted by Mr. S.S. Debnath appearing for the petitioner contended that this Court should consider the present matter under Article 215 of the Constitution of India being the 'Court of record'. The said CRP was not filed under Section 115 of CPC as revision but it was filed under 227 of the Constitution of India to exercise superintendence jurisdiction in respect of the orders passed by the Court below. Further, there was an inordinate delay in filing the written statement and no application has been filed seeking

for condoning the inordinate delay in accepting the written statement. He also contended that no application has been filed for setting aside the ex-parte order.

To support his argument, learned Sr. counsel placed reliance on the following judgment and the Apex Court:-

6.1. **Para-6** of the Hon'ble Apex Court Judgment reported in **(2001) 8 SCC 97** titled as **Estralla Rubber Vs. Dass Estate(P) Ltd:-**

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in number of decisions of this Court. The exercise of power under this Article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do duty expected or required by them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the courts subordinate or tribunals. Exercise of this power and interfering with the orders of the courts or tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or Tribunal has come to.

6.2. **Paras 14,15,16,20 and 21** of the Hon'ble Apex Court Judgment reported in **2005(6) SCC 344** titled as **Salem Advocate Bar Association T.N. Vs. Union of India:-**

"14. Order 8 Rule 1 Order VIII Rule 1, as amended by Act 46 of 1999 provides that the defendant shall within 30 days from the

date of service of summons on him, present a written statement of his defence. The rigour of this provision was reduced by [Amendment Act 22 of 2002](#) which enables the Court to extend time for filing written statement, on recording sufficient reasons therefore, but the extension can be maximum for 90 days.

15. The question is whether the Court has any power or jurisdiction to extend the period beyond 90 days. The maximum period of 90 days to file written statement has been provided but the consequences on failure to file written statement within the said period have not been provided for in Order VIII Rule 1. The point for consideration is whether the provision providing for maximum period of ninety days is mandatory and, therefore, the Court is altogether powerless to extend the time even in an exceptionally hard case

16. It has been common practice for the parties to take long adjournments for filing written statements. The legislature with a view to curb this practice and to avoid unnecessary delay and adjournments, has provided for the maximum period within which the written statement is required to be filed. The mandatory or directory nature of Order VIII Rule 1 shall have to be determined by having regard to the object sought to be achieved by the amendment. It is, thus, necessary to find out the intention of the legislature. The consequences which may follow and whether the same were intended by the legislature have also to be kept in view.

20. The use of the word 'shall' in Order VIII Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.

21. In construing this provision, support can also be had from Order 8 Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the Court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order VIII Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 of Order 8, the court in its discretion would have power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order 8 Rule 1

6.3. **Para-15** of the Hon'ble Apex Court Judgment reported in **2020(2) SCC 708** titled as **Desh Raj Vs. Balkishan(Dead) Through proposed Legal representative MS Rohini:-**

" 15. However, it would be gainsaid that although the unamended Order VIII Rule 1 of CPC is directory, it cannot be interpreted to bestow a free hand to on any litigant or lawyer to file written statement at their own sweetwill and/or to prolong the lis. The legislative objective behind prescription of timelines under the CPC must be given due weightage so that the disputes are resolved in a timebound manner. Inherent discretion of Courts, like the ability to condone delays under Order 8 Rule 1 is a fairly defined concept and its contours have been shaped through judicial decisions over the ages. Illustratively, extreme hardship or delays occurring due to factors beyond control of parties despite proactive diligence, may be just and equitable instances for condonation of delay."

6.4. **Para-6 & 11 to 15** of the Hon'ble Apex Court Judgment reported in **2007(6) SCC 420** titled as **R.N. Jadi & Brothers and ors. Vs. Subhashchandra:-**

"6. "7. The CPC enacted in 1908 consolidated and amended the laws relating to the procedure of the Courts of Civil Judicature. It has undergone several amendments by several Acts of Central and State Legislatures. Under Section 122 CPC the High Courts have power to amend by rules, the procedure laid down in the Orders. In exercise of these powers various amendments have been made in the Orders by various High Courts. Amendments have also been made keeping in view recommendations of Law Commission. Anxiety of Parliament as evident from the amendments is to secure an early and expeditious disposal of civil suits and proceedings without sacrificing the fairness of trial and the principles of natural justice in-built in any sustainable procedure. The Statement of Objects and Reasons for enacting Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976) (in short '1976 [Amendment Act](#)') highlights following basic considerations in enacting the amendments:-

5.(i) that a litigant should get a fair trial in accordance with the accepted principles of natural justice.

(ii) that every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;

(iii) that the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases."

8. By the 1999 [Amendment Act](#) the text of Order VIII, Rule 1 was sought to be substituted in a manner that the power of court to extend the time for filing the written statement was so circumscribed as would not permit the time being extended beyond 30 days from the date of service of summons on the defendant. Due to resistance from the members of the Bar against enforcing such and similar other provisions sought to be introduced by way of amendment, the [Amendment Act](#) could not be promptly notified for enforcement. The text of the provision in the present form has been introduced by the [Amendment Act](#) with effect from 1.7.2002. The purpose of such like amendments is stated in the Statement of Objects and Reasons as "to reduce delay in the disposal of civil cases".

9. The text of Order VIII, Rule 1, as it stands now, reads as under: -

"1. Written statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

8. Order 8, Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

11. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

12. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. - Justice is the goal of jurisprudence-processual, as much as substantive. [[See Sushil Kumar Sen v. State of Bihar](#) (1975 (1) SCC 774)].

13. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. [[See Blyth v. Blyth](#) (1966 (1) All E.R. 524 (HL)]. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. [[See Shreenath and Anr. v. Rajesh and Ors.](#) (AIR 1998 SC 1827)].

14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

15. It is also to be noted that though the power of the Court under the proviso appended to Rule 1 of Order VIII is circumscribed by the words - "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

16. Challenge to the Constitutional validity of the [Amendment Act](#) and 1999 [Amendment Act](#) was rejected by this Court in [Salem Advocate Bar Association, Tamil Nadu v. Union of India](#) (JT 2002 (9) SC 175). However to work out modalities in respect of certain provisions a Committee was constituted. After receipt of Committee's report the matter was considered by a three-Judge Bench in. As regards Order 8 Rule 1 Committee's report is as follows(SCC pp.362-63, paras 15-18):

"15. The question is whether the Court has any power or jurisdiction to extend the period beyond 90 days. The maximum period of 90 days to file written statement has been provided but the consequences on failure to file written statement within the said period have not been provided for in Order VIII Rule 1. The point for consideration is whether the provision providing for maximum period of ninety days is mandatory and, therefore, the Court is altogether powerless to extend the time even in an exceptionally hard case.

16. It has been common practice for the parties to take long adjournments for filing written statements. The legislature with a view to

curb this practice and to avoid unnecessary delay and adjournments, has provided for the maximum period within which the written statement is required to be filed. The mandatory or directory nature of Order VIII Rule 1 shall have to be determined by having regard to the object sought to be achieved by the amendment. It is, thus, necessary to find out the intention of the legislature. The consequences which may follow and whether the same were intended by the legislature have also to be kept in view.

17. *In Raza Buland Sugar Co. Ltd., Rampur v. The Municipal Board, Rampur* [AIR 1965 SC 895], a Constitution Bench of this Court held that the question whether a particular provision is mandatory or directory cannot be resolved by laying down any general rule and it would depend upon the facts of each case and for that purpose the object of the statute in making out the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

18. *In Sangram Singh v. Election Tribunal Kotah & Anr.* [AIR 1955 SC 425], considering the provisions of the Code dealing with the trial of the suits, it was opined that:

"Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a Penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle. "

16. The position was examined in details in *Kailash's case* (supra) and *Rani Kusum Kanchan Devi and Sk. Salim Haji Abdul Khayumsab v. Kumar*, SCC pp. 49-53, paras 7-16."

6.5. **Para-27** of the Hon'ble Apex Court Judgment reported in **2009(5) SCC 791/793** titled as **Commissioner of**

Customs and Central Excise Vs. Hongo India Private

Limited and anr:-

" 27. The other decision relied on by the counsel for the appellant is *M.V. Elisabeth and Others vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, 1993 Supp (2) SCC 433*. The learned ASG heavily relied on the following observations:

"66. The High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of this Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own powers....."

Here again, there is no dispute about the above proposition. The High Courts in India are having inherent and plenary powers and as a Court of Record the High Courts have unlimited jurisdiction including the jurisdiction to determine their own powers. However, the said principle has to be decided with the specific provisions in the enactment and in the light of the scheme of the Act, particularly in this case, [Sections 35, 35B, 35EE, 35G and 35H](#) of the unamended [Central Excise Act](#), it would not be possible to hold that in spite of the above-mentioned statutory provisions, the High Court is free to entertain reference application even after expiry of the prescribed period of 180 days.

7. On the other hand Mr. S.M. Chakraborty, learned Sr. counsel appearing for the respondent contended that though the suit i.e TS No.59 of 2003 was filed way in 2003 only in 2013 his client, the petitioner in CRP has been arrayed as respondent-defendant in the suit. Accordingly, as per the amended plaint, he was brought on record as respondent and he was impleaded. Thereafter, they filed an amended plaint in 2013 and accordingly opportunity was given to file written statement and he filed the written statement. His right was forfeited when

the Court below decided to proceed ex parte against the petitioner and declined to accept the written objection. Learned Sr. counsel has drawn the attention of this Court that the review is not maintainable against the CRP. To substantiate his argument, he relied on **para-5** the Judgment of the Hon'ble Calcutta High Court reported in **1973 AIR(Cal) 302** titled as **Dewan Singh and anr. Vs. Golap Singh ad anr**, the same is reproduced herein under:-

".....Even if there was a error while exercising the revisional jurisdiction under Section 115 of the Code of Civil Procedure, the same cannot be taken to be a mistake or an error on the face of the record. It was held by Mr. Justice Mohammad Ismail in the case of Thakur Kishun Chand Singh V. Munshi Makund Sarup, reported in AIR 1938, All 308 that an erroneous view of the law on a debatable point or wrong exposition of the law or a wrong application of the law cannot be considered to be a mistake or an error apparent on the face of the record. A reference in this context may again be made to a decision of this Court in the case of Major P. Bardhan V. Dr. B. Sarkar, reported in 53 Cal WN 869, Mr. Justice Sen, on a consideration of various cases including the decision of the Privy Council in Chhaju Rams case 26 Cal WN 697: (AIR 1922 PC 112) observed that a mere error of law therefore also not maintainable."

7.1. Further to substantiate his argument, learned Sr. counsel appearing for the respondent herein referred to **Paras-4 to 9** of the Hon'ble Apex Court Judgment reported in **(2017) 4 SCC 692** titled as **Sasi(Dead) Through Legal Representatives Vs. Aravindakshan Nair and ors:-**

"5. Order 47 Rule 1 of the Code of Civil Procedure reads as follows:- "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. (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review. Explanation.- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

6. The grounds enumerated therein are specific. The principles for interference in exercise of review jurisdiction are well settled. The Court passing the order is entitled to review the order, if any of the grounds specified in the aforesaid provision are satisfied.

7. In *Thungabhadra Industries Ltd. v. Govt. of A.P.*¹, the Court while dealing with the scope of review had opined:-

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

8. In *Parsion Devi v. Sumitri Devi*, the Court after referring to *Thungabhadra Industries Ltd. (supra)*, *Meera Bhanja v. Nirmala Kumari Choudhury* and *Aribam Tuleswar Sharma v. Aribam Pishak Sharma*, held thus:-

"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".

9. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to be self-evident and is not to be found out by a process of reasoning. We have adverted to

the aforesaid aspects only to highlight the nature of review proceedings.

7.2. **Para-11** of the Hon'ble Apex Court Judgment reported in **1964 SC 1372** titled as **M/s Thungabhadra Industries Ltd Vs. The Government of Andhra Pradesh:-**

11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the court held on an 'identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out. No questions of fact were involved in the decision of the High Court in T.R.Cs. 75 to 77 of 1956. The entire controversy turned on the proper interpretation of r. 18(1) of the turnover & Assessment Rules and the other pieces of legislation which are referred to by the High Court in its order of February 1956 nor could it be doubted or disputed that these were substantial questions of law. In the circumstances therefore, the submission of the appellant that the order of September 1959 was vitiated by "error apparent" of the kind envisaged by O. XLVII r. 1, Civil Procedure Code when it stated that "no substantial question of law arose" appears to us to be clearly well-founded. Indeed, learned Counsel for the respondent did not seek to argue that the earlier order of September 1959 was not vitiated by such error."

8. Heard both sides and perused the evidence on record.

9. Now the question that falls for consideration is whether the present review petition is maintainable against the order passed in Civil Revision Petition.

For answering the same, it is necessary to extract Sections 114 and 115 of CPC and also Article 227 of the Constitution of India which are reproduced herein-under:-

9.1 Section 114 of CPC:-

"Section 114 CPC – 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 Court, 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.

9.2. Section 115 of CPC:-

"1) The High Court may call for the record of a case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where-

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

9.3. Article 227 of the Constitution of India:-

"227. Power of superintendence over all courts by the High Court

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction

(2) Without prejudice to the generality of the foregoing provisions, the High Court may

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces

10. It is seen from the record that the impugned Order passed by this Court which is under challenge i.e. the order in CRP is not order or judgment in its finality and where appeal does not lie as contemplated under Section 115 of Civil Procedure Code. Thus, the matter has been examined under Article 227 of the Constitution of India. The CRP has been filed and the same has been accordingly entertained. Since the matter has been dealt with under Article 227 of the Constitution

of India and in so far as the issue for filing the review petition is concerned under Section 114 of CPC, this Court is of the opinion that review against the said CRP lies.

11. So in the light of the above, this Court is of the opinion that the review petition is maintainable against the CRP.

12. Now the second issue that falls for consideration is whether the review petition which is filed fulfills the requirement or satisfies the requirement contemplated under Section 114 of the Civil Procedure Code guidelines.

13. Section 114(b) of CPC contemplates that *a person can file a review if he aggrieved by a decree or Order from which no appeal is allowed by this Code*. Here in the 2nd paragraph of the affidavit of the review petitioner herein it is stated that *"On perusal of the order contained in 9 pages, the petitioner finds that the order of disposal is not in order as the Hon' ble Court may have taken the application as one under Section 115 of the CPC, oblivious of the fact that the application is actually under Article 227 of the Constitution of India. Consequently, the jurisdiction being different, the Hon'ble Court by its orders commits an "error-apparent", which can be simply pointed out without any argument. And hence this application for changing the order"*. According to said contention, the entire

impugned judgment became patent error and this will amount to re-opening the revision petition in the guise of a review petition. So the petitioner herein is aggrieved by the findings of this Court in CRP they should have approached the appropriate Court and not file a Review petition and reopen the CRP. So in the opinion of this Court review petition does not fulfill the criteria of Section 114 (b) of CPC.

14. Further, the Hon'ble Apex Court in Judgment passed on **18th August 2022** in **SLP(C) Nos.9602-03 of 2022** titled as **S. Madhusudhan Reddy Vs. V. Narayana Reddy and ors.**, disposed of the SLP with the observation that the review petitions were nothing short of an abuse of the process of the Court and ought to have been rejected by the High Court as not maintainable. The said SLP was directed against the common judgment and order passed by the Learned Single Judge of the High Court for the State of Telangana at Hyderabad, allowing the review petition. In the light of the said Hon'ble Apex Court Judgment also, this Review petition does not stand.

15. In such circumstances, the review petitioner has not made out a case for reviewing the order passed in the CRP. Accordingly, the review petition is dismissed.

16. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

suhanjit

