

Court No. - 87

Case :- CIVIL MISC REVIEW APPLICATION No. - 432 of 2023

Applicant :- Jag Mohan Agarwal

Opposite Party :- Smt. Kanchan Kumari Jain

Counsel for Applicant :- Balwinder Singh Suri, Mukesh Kumar Pandey

Counsel for Opposite Party :- Sudeep Harkauli

Hon'ble Neeraj Tiwari, J.

1. Heard Sri Balwinder Singh Suri along with Sri Mukesh Kumar Pandey, learned counsel for applicant/petitioner and Sri Sudeep Harkauli, learned counsel for opposite party/respondent.

2. Present review application has been filed seeking following reliefs:-

“(a) To allow this review application by setting aside the impugned judgment and order dated 03.08.2023 and hear the matter on merit in the presence of counsel of the Applicant/Petitioner.

(b) And/or to stay the effect and operation of the order, judgment dated 03.08.2023 passed in Civil Misc. Writ Petition (A) No. 7428 of 2023 (Judgement dated 03.08.2023 Reserved on 23.05.2023 and Delivered on 03.08.2023) till the Reserved on 23.05.2023 and Delivered on 03.08.2023) final disposal of the present Review Application, failing thereby will result in express prejudice and irreparable loss and injury to the Applicant/Petitioner.

(c) And/or to allow to bring on record certain legal documents which are germane and which after due diligence could not be filed at the time of passing of order and judgment by this Hon'ble Court in Civil Misc. Writ Petition (A) No. 7428 of 2023, Reserved on 23.05.2023 and Delivered on 03.08.2023.

(d) And/ or to summon the entire record of the Petition/Writ (A) No. 7428 of 2023.

(e) And/or to summon the entire lower court record as well pertaining to both proceedings- under section 10 of U.P. Act No. 16 of 2021 bearing case No. 696 of 2022 pending before the Rent Authority, Agra and Execution proceedings.”

3. Brief facts of the case are that Writ-A No. 7428 of 2023 has been filed by Sri Pankaj Agarwal, upon which a detail counter affidavit has also been filed by Sri Sudeep Harkauli, learned counsel for opposite party/respondent. Final hearing of the writ petition took

place on 23.05.2023. Sri Pankaj Agarwal has argued the case on behalf of petitioner whereas it was argued by Sri Sudeep Harkauli on behalf of opposite party/respondent and ultimately, judgment was reserved on the same day. Later on it was pronounced on 03.08.2023 dismissing the writ petition.

4. Now, Sri Balwinder Singh Suri along with Sri Mukesh Kumar Pandey, Advocates has filed present review application for reviewing the order dated 03.08.2023.

5. Sri Harkauli has raised preliminary objection about the maintainability of review application. He submitted that Writ-A No. 7428 of 2023 was filed and argued by Sri Pankaj Agrawal whereas present review application has been filed by Sri Balwinder Singh Suri along with Sri Mukesh Kumar Pandey, therefore, in the light of pronouncements made by Apex Court as well as this Court, review application is not maintainable. In support of his contention, he has placed reliance upon the judgments of this Court passed in ***Ram Prasad Shukla vs. Suraj Lal and Ors.***; 2017 (122) ALR 144, ***Mohd. Kaleem vs. Sumitra Devi and Ors.***; 2021 (144) ALR 651 and ***Ramesh Kumar Sharma vs. M/s. Gool Poput and others***; 2021 (8) ADJ 123.

6. Sri Suri, learned counsel for applicant opposed the submissions of Sri Sudeep Harkauli, learned counsel for opposite party and submitted that review application is maintainable. In support of his contention, he placed reliance upon the judgments of this Court as well as Apex Court in the matters of ***Sharda Prasad Mishra vs. State of U.P. and others*** (Writ-A No. 60191 of 2006) decided on 10.10.2013, ***Uma Nath Pandey and Ors. vs. State of U.P. and Anr.***; 2009 (75) ALR 329 (Criminal Appeal No. 471 of 2009)(arising out of SLP (Crl.) No. 6382 of 2007) and ***United India Insurance Co. Ltd. vs. Rajendra Singh and others***; (2000) 3 Supreme Court Cases 581.

7. I have considered the rival submissions of counsel for parties and perused the records as well as judgments cited above.

8. This fact is undisputed that writ petition was filed and argued by Sri Pankaj Agarwal on behalf of petitioner. Further, present review application is filed by Sri Balwinder Singh Suri along with Sri Mukesh Kumar Pandey on behalf of applicant/petitioner, who were not the counsels in writ petition. Sri Pankaj Agarwal is also not present in Court at the time of argument of review application, therefore, issue before this Court is to decide as to whether, present review application is maintainable or not.

9. Learned counsel for applicant has placed reliance upon the judgment of this Court in the matter of *Sharda Prasad Mishra (supra)*. From the perusal of the said judgment, it is apparently clear that it is not in favour of applicant rather against him. The only fact which is pointed out by learned counsel for applicant is about “No Objection Certificate”. In the present case, there is no “No Objection Certificate” in favour of applicant from earlier counsel. Even otherwise, mere obtaining of “No Objection Certificate” is not suffice for filing of review application by a subsequent counsel. Relevant parts of the said judgement is quoted below:-

“When the case was initially heard one Sri S.K.Singh had appeared for the respondent nos.2 to 7. This review application has been filed by the learned counsel, who was not the counsel for the respondent when the judgement was passed.

The Supreme Court in the case of Tamil Nadu Electricity Board and another vs. N. Raju Reddiar and another A.I.R. 1997 SC 1005 has held that review petition cannot be entertained at the behest of a counsel or a person, who had not appeared before the Court or was not party in the main case. Para-1 of the judgement reads as under:-

"1. It is a sad spectacle that a new practice unbecoming and not worthy of or conducive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr. V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on 24-4-1996. Yet another advocate, Mr. S.U.K. Sagar, has now been engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor was party in the main case. It is salutary to note that the court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on- Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No.2670 of 1996 in CA No.1867 of 1992, a Bench of three Judges to which one of us, K. Ramaswamy,J., was a member, has held as under:

"The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-Record when the appeal was heard and decided on merits. The review petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the review petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would not be in the interest of the profession to permit such practice. That part, he has not obtained " No Objection Certificate" from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the "No Objection Certificate" would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the "No Objection Certificate" from the erstwhile counsel has disentitled him to file the review petition. Even otherwise, the review petition has no merits. It is an attempt to reargue the matter on merits. On these grounds, we dismiss the review petition".

The review application is , therefore, not maintainable. ”

10. He further placed reliance upon the judgment of Apex Court in the matter of ***Uma Nath Pandey (Supra)***. The said judgment is also does not come in the rescue of applicant for the very simple reason that it is about the ‘natural justice’. The meaning of ‘natural justice’ is to provide the opportunity of hearing and rebuttal to both parties. Undisputedly, present review application was filed by applicant and after exchange of pleadings, he was heard through his counsel Sri Pankaj Agarwal at length. Thereafter judgment was pronounced. Relevant parts of the said judgement is quoted below:-

“6. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

7. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from

unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

19. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.”

11. Lastly, he has placed reliance upon the judgment of Apex Court in the matter of ***United India Insurance Co. Ltd. (Supra)***. The said judgment is talking about ‘fraud’. First of all, in writ petition, there is no allegation of fraud against respondent, therefore, a new fact cannot be brought on record by way of filing review application. Further, until review application is held maintainable, said judgement cannot be taken into consideration.

12. Sri Harkauli has relied upon the judgment of this Court in ***Ram Prasad Shukla (Supra)***, in which Court has clearly held that review application filed by a new counsel who had not argued the writ petition is not maintainable. Relevant parts of the said judgement is quoted below:-

“I also find substance in the submission of the learned counsel for the opposite party that the review petition is not maintainable in view of the fact that it has not been filed by the counsel, who had argued the writ petition. I also find substance in the submissions of the learned counsel for the opposite party that the plea of deposit under section 30(1) or 30(2) was not agitated before the trial court in the written statements. Therefore, now the petitioner cannot travel beyond the pleadings. ”

13. The very same view is again taken by this Court in the matter of ***Mohd Kaleem (Supra)***, in which Court has taken specific view that a review/recall/modification application filed by subsequent counsel is not maintainable and it is nothing but an attempt to delay the compliance of judgement, therefore, review application is liable to be dismissed with exemplary cost. Relevant parts of the said judgement is quoted below:-

“12. In view of the above, I am of the considered opinion that the review/recall/modification application by a subsequent counsel is not maintainable. It is nothing but to delay the compliance of the judgment, therefore, exemplary cost is required to be imposed upon the applicant for delaying the compliance of judgment.”

14. This issue again came before this Court in ***Ramesh Kumar Sharma (Supra)*** in which this Court relying upon the judgment of

Apex Court, has held that review application filed by a subsequent counsel is not maintainable. Relevant parts of the said judgement is quoted below:-

“30. The fact as emanates from the record reveals that Sri Radhey Shyam Dwivedi and Rajesh Dwivedi were counsels representing the applicants. The Court noted the submission advanced by the learned counsel for the respondents in the judgment, therefore, in view of the judgment of Apex Court in the case of (Tamil Nadu Electricity Board and another) (supra), the review petition at the behest of another counsel is not maintainable. Paragraph 1 of the judgment is being extracted hereinbelow:

.....

.....

33. In the instant case, the matter was argued on behalf of applicants by original counsel, and review was filed by Sri N.B. Nigam, Advocate who was not the original counsel of the applicants, and even after filing the review, the applicants have changed the counsel and engaged a new counsel Sri S.K. Chaturvedi. Therefore, this Court is of the view that the review application is not maintainable.”

15. I have also perused the judgment passed in **Kaniz Fatma & Others Vs. Additional District Judge & Others [2008 (70) ALR 361]**, in which Court has taken very same view that review application cannot be filed by subsequent counsel. Relevant paragraph 25 is quoted below :-

"25. I am therefore of the considered view that once the writ petition has been decided on merits, the scope of review is very limited and successive review applications are not maintainable. The first review application has been filed by a subsequent counsel Sri Khalil Ahmad without consent of the original counsel who is alleged to have given a wrong undertaking before the Court has neither filed review application nor has appeared in the Court to admit or deny the allegations made against him. It would be laying down a bad precedent to allow successive review applications by subsequent counsel by making allegations against the original counsel engaged initially. In the first review application the Court has considered all the aspects of the matter in its judgment and order dated 20.3.2007 by holding that the matter cannot be reopened by engaging another counsel."

16. Apex Court in the matter of **Tamil Nadu Electricity Board and Others Vs. N. Raju Reddiar and others [AIR 1997 SC 1005]** has

reiterated the same view that review application filed by a subsequent counsel is not maintainable. Relevant paragraph 1 is quoted below :-

"1. It is a sad spectacle that new practice unbecoming of worthy and conducive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr. V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on April 24, 1996. Yet another advocate, Mr. S.U.K. Sagar, has now been engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case. It is salutary to not that court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No.2670/96 in CA No.1867/92, a Bench of three Judges to which one of us, K. Ramaswamy,J., was a member, has held as under:

"The record of the appeal indicates that Shri Sudarsh Menon was heard and decided on merits. The Review Petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the Review Petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would be not in the interest of the profession to permit such practice. That part, he has not obtained " No Objection Certificate" from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the "No Objection Certificate" would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the "No Objection Certificate" from the erstwhile counsel has disintitiled him to file the Review Petition. Even otherwise, the Review Petition has no merits, It is an attempt to reargue the matter on merits. On these grounds, we dismiss the Review Petition."

17. This Court in the matter of **Sidheswar Mishra Vs. State of U.P. & Others** [2006 (9) ADJ 427] has also reiterated the settled

provisions of law and held that review application filed by a subsequent counsel is not maintainable. Relevant paragraph 14 is quoted below :-

14. The Court is not inclined to open 'Pandora's Box' for the following reasons-

Firstly: The law is well settled that recall or review application can be filed only by the counsel who had argued the case and not by a subsequent counsel who is engaged after the decision.

Secondly: The recall application in the instant case is in the nature of review application as the judgment has been delivered on merits after hearing the counsels for the parties and the prayer is to recall the judgment and hear on merits again.

Thirdly: When the recall filed by Sri Ranjeet Saxena was listed Sri Brij Lal Verma could not have been authorized by Sri Ranjeet Saxena to argue the application and the case on merits, the following reasons.

(a) Sri Ranjeet Saxena is appointed by the Corporation on its panel to argue to argue its cases and Sri B.L. Verma. The U.P. Power Corporation is a Estate within the meaning of Article 12 of the Constitution and the position of a counsel on its panel is Akur standing counsel appointed by the Government,

(b) Along with standing counsels, brief holders are also appointed by the State Government. If the Corporation had not appointed any brief holders the counsel on the panel cannot handover his government brief to any counsel who is not on the panel to argue government brief.

(c) In any event it was the duty of Sri Ranjeet Saxena to have been present to argue the recall application filed by him in order to avoid excuse again by the Corporation that case was argued by Sri B.L. Verma who is not on its panel and not by Sri Ranjeet Saxena who is on the panel of thue Corporation.

(d) It is very easy to allege by a subsequent counsel that information to his client was not given. If that be the case the recall application ought to have been filed through Sri R.D. Khare. Consequently the case after the judgment has been allotted to Sri Ranjeet Saxena by the Corporation to get recall of order and judgment dated 31.1.2006.”

18. Similar issue came before this Court in the matter of ***Rajesh Kumar Tiwari vs. U.P. Shiksha Parishad and 4 Ors. (Service Single No. 7775 of 2005)***, in which after considering different judgments, this Court has held that review/recall/modification application filed

by a subsequent counsel is not maintainable. Relevant part of the said judgement is quoted below:-

“4. On perusal of aforesaid judgments, it is evident that review/recall/modification application by a subsequent counsel is not maintainable.”

19. From the perusal of aforesaid judgments, intention of the Courts are very much clear that in case such review applications are entertained, it would be unending process with permission to opening of new Pandora Box. Undoubtedly, if the case is filed and argued by a counsel, he is the only person to file review application for the reasons that he is aware about the facts and grounds argued before this Court. This cannot be agitated by a subsequent counsel who has no concern with the matter till the final disposal of the case. Therefore, such practice of engagement of new counsel for filing review/recall/modification must have been depreciated. Further, granting such permission would be gross misuse of process of law and an attempt to raise new arguments for re-hearing of case on merits.

20. Now coming to the present case. As the facts are undisputed that writ petition was filed by Sri Pankaj Agarwal whereas review application has been filed by Sri Balwinder Singh Suri along with Sri Mukesh Kumar Pandey without obtaining ‘No Objection Certificate’, therefore, in the light of judgments referred herein-above, no such review application is maintainable.

21. Therefore, review application is **dismissed** on the ground of maintainability.

22. No order as to costs.

Order Date :- 31.10.2023

Sartaj