

GAHC010096672022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./98/2022

THE DIRECTOR, ARUNODI APARTMENT PVT. LTD.
MC ROAD, GUWAHATI CLUB, GUWAHATI , 781003, ASSAM

VERSUS

FATEMA BIBI @ BEWA AND ANR.
W/O LATE MOHIBUL HOQUE
RESIDENT OF KUMARGATI (GASPARA) PO TISTARPAR, PS AND DIST
DHUBRI, ASSAM, 783324

2:OFIZUDDIN
S/O LATE SUKNAL SK.
RESIDENT OF KUMARGATI (GASPARA) PO TISTARPAR
PS AND DIST DHUBRI
ASSAM
78332

Advocate for the Petitioner : MR Z MUKIT

Advocate for the Respondent : MS. R CHOUDHURY

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER(CAV)

Date : 20-03-2024

Heard Mr. Z. Mukit, learned counsel for the petitioner. Also heard Ms. R. Choudhury, learned counsel for the respondents.

2. The petitioner has filed an application under Section 114 read with Order XLVII Rule 1 & 3 of CPC, 1908 against the impugned order dated 18.04.2022 passed by this Court in MFA No. 14/2022.

3. The factual matrix leading to the present review application is that the respondents as claimants filed a claim case before the Commissioner of Workmen's Compensation Act(Employees Compensation Act), Dhubri (herein after referred as E.C. Act) claiming compensation to the tune of Rs.7,50,000/- in E.C. Case No. 12/2011. In the claim petition, the claimants alleged that on 30.10.2010 at about 05:00 p.m., their husband/son, namely Mahibul Hoque, while working with an electric machine to dress the marble of a floor in the building constructed by the present petitioner, had died due to electric shock. The claimants further alleged that the builder(the present petitioner) on coming to know about the accident had paid Rs.50,000/- by two account payee cheques to the claimants and had promised to pay a further sum of Rs.7,50,000/- as compensation to them. But the petitioner failed to pay the said amount. Thereafter, a pleader's notice under section 10 of E.C. Act was sent to the present petitioner by registered post. As the petitioner had failed to comply with the said notice, the claimants had to file the claim case before the Commissioner claiming compensation as aforesaid.

4. The petitioner contested the case by filing written statement wherein the petitioner denied the claim made by the claimants. In the written statement, the petitioner contended that he was not the owner of the building but the builder only for the construction at Janpath. The deceased was not employed by them but was engaged by the contractor, namely one

Abdul Khaleque who was not made a party to the case for which the case was bad for non-joinder of necessary party.

5. It was further contented in the written statement that on 21.10.2010, the claimant has come to a compromise after receiving an amount of Rs.75,000/- from the petitioner and to that effect, the claimants had executed a deed of compromise and the money receipt in favor of the petitioner wherein they had undertaken not to make any further claim against the petitioner in the court of law. The said amount of Rs.75,000/- was paid purely on humanitarian ground without admitting any liability under the law. The petitioner in the written statement denied that they had promised to pay Rs.7,50,000/- to the claimants. They had also replied to the pleader's notice sent by the claimants and accordingly, prayed for dismissal of the claim petition.

6. Based upon the pleadings of the parties, the Commissioner framed four numbers of issues and after recording the evidences and hearing the learned counsel for the parties, an amount of Rs.6,64,110/- was awarded in favor of the claimants vide judgment dated 12.11.2021.

7. The petitioner, being highly aggrieved by the said judgment and order dated 12.11.2021 passed by the Commissioner of Workmen's Compensation Act, preferred an appeal before this Court and the said appeal was listed on 18.04.2022 for admission. On the said date, i.e. 18.04.2022, though the matter was heard but this Court neither formulated any substantial question of law nor gave any findings as to whether there is any substantial question of law involved in the appeal as required under the proviso 2 Section 30 of

the E.C. Act. It is alleged that on 18.04.2022, this Court, without considering all the evidence on record such as the deposition of the PWs, finally disposed of the matter, directing the petitioner/appellant to pay the awarded compensation after deducting an amount of Rs.50,000/-. As the order dated 18.04.2022 suffers from errors apparent on the face of the records, the petitioner has preferred this review application against the order dated 18.04.2022 passed by this Court in MFA No. 14/2022.

8. It was urged by the learned counsel for the review petitioner that as per proviso to Section 30 of E.C. Act, no appeal would lie against any order, unless a substantial question of law is involved in the appeal. But in the instant appeal, neither any such substantial question of law was framed nor any finding was arrived at as to whether or not there was/is any substantial question of law involved in the appeal while the matter was being heard and decided at the admission stage by this Court by its order dated 18.04.2022. Hence, the impugned order is not sustainable in the eye of law and is liable to be reviewed for the ends of justice.

9. It is also the submission of learned counsel for the review petitioner that while passing the impugned order dated 18.4.2022, though this Court had considered the fact that before initiation of the proceeding, the appellant had paid a sum of Rs. 50,000/- to the respondents/claimants, but this Court failed to appreciate the depositions of PW3, wherein he had replied in his cross-examination that he was the subcontractor and the deceased was under his employment. If the said statement of PW3 was taken into consideration, then the appellant cannot be held to be liable to

pay any compensation to the respondents/claimants under the law. According to learned counsel for the petitioner, as this vital piece of ocular evidence was not looked into by this Court while deciding the appeal vide its order dated 18.04.2022, the said order suffers from apparent errors on the face of the record and as such, the same deserves to be reviewed by this court.

10. It is further submitted by the learned counsel for the review petitioner that the petitioner has no knowledge regarding settlement of the amount of compensation between the parties by their respective counsel. Even in cases where the parties authorized the counsel to enter into the compromise, he has no right to enter into any settlement without the consent and approval of the parties. In the case in hand, no consent was taken from the petitioner by his counsel regarding settlement arrived at between the parties as per order of this Court dated 18.04.2022. As such, the learned counsel for the review-petitioner prays to review the order dated 18.04.2022 passed in MFA No. 14/22.

11. The learned counsel for the review petitioner further has submitted that as the petitioner had challenged the legality and validity of the award dated 12.11.2021 passed by the Commissioner as one of the substantial questions of law was whether the deceased was an employee of the appellant company as such, question of settlement or adjustment of amount does not arise at all.

In support of his submission, learned counsel for the review petitioner has placed reliance on the following case laws-

- (i) Board of Control for Cricket in India & Anr. vs. Netaji Cricket Club & Ors. reported in (2005) 4 SCC 741.
- (ii) Govindammal vs. Marimuthu Maistry & Ors. reported in AIR 1959 Madras 7.
- (iii) Himalayan Coop. Group Housing Society vs. Balwan Singh & Ors. reported in (2015) 7 SCC 373.
- (iv) North East Karnataka Road Transport Corporation vs. Sujatha, reported in (2019) 11 SCC 514.
- (v) Shrimati Jamilabai Abdul Kadar vs. Shankarlal Gulabchand & Ors. reported in (1975) 2 SCC 609.

12. In response to the submission, learned counsel for the respondents by referring the judgment of Govindammal vs. Marimuthu Maistry, reported in 1959 0 AIR(Mad) 7, has pointed out that the Hon'ble Supreme Court has held that even in cases where there is no express authorization to enter into a compromise under the inherent authority impliedly given to the counsel, he has power to enter into the compromise on behalf of his client.

13. The learned counsel for the respondents/claimants further submits that the grounds taken by the petitioner against the order dated 18.04.2022 passed by this Court are not the grounds for review. The petitioner may approach before the appropriate forum by filing an appeal against the order of this Court. Hence, the learned counsel for the respondent/claimant prays

for dismissed of the review petition.

14. I have considered the submissions made by the learned counsel for the parties. I have also perused the judgment of the learned Commissioner as well as the order of this Court vide dated 18.04.2022.

15. Before dealing with the issues raised by the petitioner, it is apt to note that the petitioner has moved this petition under Order 47 read with Section 114 of the C.P.C., which provides power to the Court for review of its order. According to these provisions, the Court of review has only limited jurisdiction circumscribed by the definitive limits fixed by the language used in Order 47 Rule 1 of the C.P.C. It may allow a review on three specified grounds, namely -

(1) discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or order was made;

(2) mistake or error apparent on the face of the record; or

(3) for any other sufficient reason.

16. While considering the power of review of a Court under Order 47 Rule 1 of the CPC, Hon'ble Apex Court in case of ***Meera Bhanja v. Nirmala Kumari Choudhury***, reported in **(1995) 1 SCC 170** has held as follows-

"the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. The review petition has to be entertained only on the ground of error apparent on the face of the record and not on any other ground. An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers of court under Order 47 Rule 1, CPC is similar to the jurisdiction available to the High court while seeking review of the orders under Article 226 of the Constitution of India."

17. In the case of ***Perry Kansagra v. Smriti Madan Kansagra***, reported in **(2019) 20 SCC 753**, Hon'ble Supreme Court while considering ambit and scope of power of review, has considered its various judgments and observed as below:-

"In Inderchand Jain v. Motilal, 2009 (14) SCC 663, it was observed in paras 10, 11 and 33 as under:

"10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In Lily Thomas v. Union of India (2000) 6 SCC 224, this Court held:

“It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise.

33. The High Court had rightly noticed the review jurisdiction of the court, which is as under:

'The law on the subject--exercise of power of review, as propounded by the Apex Court and various other High Courts may be summarised as hereunder:

(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the face of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.' In our opinion, the principles of law enumerated by it, in the facts of this case, have wrongly been applied."

18. In **Ajit Kumar Rath v. State of Orissa**, reported in **(1999) 9 SCC 596**, it was observed:

"In review proceedings, the Tribunal deviated from the principles laid down above which, we must say, is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy had been finally decided. This, we are constrained to say, is not the scope of review under Section 22(3) (f) of the Administrative Tribunals Act, 1985...."

19. Similarly, in **Parsion Devi v. Sumitra Devi**, reported in **(1997) 8 SCC 715** the principles were summarised as under:

"9. 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."

20. On a bare look at the provisions of Order 47 Rule (1) of the CPC and various pronouncements of Hon'ble Supreme Court in this subject, makes it clear that a judgment or order may be open to review, if there is a mistake or an error apparent on the face of record or on other grounds envisaged in aforesaid provision. 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 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". Further, a review cannot be claimed or available merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact, which stares in the face without any elaborate argument being noted for establishing it. It may be pointed out that expression of 'any other sufficient reason' used in Order 47 Rule 1 of the CPC means, a reason sufficiently analogous to those specified in the rule.

21. Considering the aforesaid aspects of law and judgments rendered by Hon'ble Apex Court, if we consider the submissions and grounds raised by the petitioner in the instant case, this Court does not find any apparent error

or mistake on the face of record which inspires this Court to review the impugned order dated 18.04.2022. It is also pertinent to mention here that, in impugned order dated 18.04.2022, after referring facts of the case and submissions made by learned counsel, it has been specifically mentioned that before passing of impugned order, both the learned counsel for the parties were heard and materials available on record were perused with utmost circumspection. Therefore, it cannot be said that points raised by learned counsel for the petitioner have not been considered.

22. In fact during the course of the argument, the learned counsel for the petitioner was not able to show the error or mistake in the impugned order dated 18.04.2022, apparent on the face of record. Only saying that there is error or mistake apparent on the face of record is not sufficient to review the order. The grounds raised by the learned counsel for the review petitioner indicates that the petitioner is not satisfied with the outcome of the impugned order but such dissatisfaction with the result cannot be a ground of review.

23. There is no dispute that in appropriate cases, the High Court has power to review its order but the cases referred by the learned counsel for the petitioner have no relevancy in respect of review jurisdiction of this Court. Hence, the case laws cited by the learned counsel for the petitioner are not helpful to him in view of the facts of instant case.

24. In view of the above discussion and observation, this Court does not find any ground raised by the learned counsel for review petitioner which may require review the impugned order dated 18.04.2022 passed in MFA

No.14/2022.

25. In the result, the review petition has no merit and is accordingly dismissed. There is no order as to cost.

JUDGE

Comparing Assistant