

GAHC010276422023



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

Case No. : Review.Pet./27/2024

MANSUR ALI AHMED
S/O NIZAMUDDIN AHMED,
RESIDENT OF NEAR TV CENTER, PO C.R BUILDING, PS AND DIST
DIBRUGARH, ASSAM 786001

VERSUS

SANTOSHI AGARWALLA AND ANR
W/O SRI SANJAY AGARWALLA,
RESIDENT OF MANCOTTA TOM TOM TULA . PO MANKOTTA,PS AND DIST
DIBRUGARH, ASSAM 786001

2:SRI SANJAY AGARWALLA
S/O NOTKNOWN
RESIDENT OF MANCOTTA TOM TOM TULA . PO MANKOTTA
PS AND DIST DIBRUGARH
ASSAM 78600

Advocate for the Petitioner : MR. D J DAS, MR. K N CHOUDHURY
Advocate for the Respondent : MS. S NATH, MR. D MAZUMDAR,MR. S BISWAS,MR C
GOGOI,MS D DEVI,MR. D MAZUMDAR

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

17.12.2024

Heard Mr. K. N. Choudhury, learned Senior counsel assisted by Mr. N. Gautam, learned counsel for the review petitioner. Also heard Mr. D. Mazumdar,

learned Senior counsel assisted by Mr. S. Biswas, learned counsel for the respondents.

2. By filing an application u/s 114 read with order 47 and section 151 of the Code of Civil Procedure (herein after referred as CPC), the petitioner has sought for review of the order dated 07/11/2023 passed by this Court in Contempt case (Civil) No. 215 of 2023.

3. The factual matrix relating to this application is that the complainant/petitioner had preferred a contempt application u/s 10 read with 12 of the Contempt of Court Act, 1971 with regard to the wilful violation and disobedience of the *status quo* order dated 16/12/2022 passed by this Court in FAO No. 58 of 2022 by way of arraying the respondents as the contemnors and the said application was numbered as contempt Case No. 215/2023.

4. The aforesaid contempt case being No. 215/2023 was disposed of by this Court dated 07/11/2023 by way of modifying the earlier order of *status quo* dated 16/12/2022 to the extent that from the date of the order i.e., 07/11/2023, no construction, modification, renovation or alternation in any form of the disputed property would be carried forward by the respondent/contemnors and at the same time permitting the respondent/contemnors to carry on their business in the manner they were conducting without any further alteration of the nature of the business that was already being carried out.

5. The aforesaid order dated 07/11/2023 was passed by this Court on the basis of a report submitted by the Advocate Commissioner dated 16/10/2023, on being asked by this Court to conduct an local inquiry and submitted a report

before this Court on the issues as to whether as on 16/12/2022, the applicants/ respondents/ contemnors were continuing with their business activity and if yes, the nature and extent of the business activity and also as to what kind of business activity was being done by the applicants as on the date of inspection.

6. It was urged by learned Senior counsel for the petitioner that the decision of this Court to place reliance on the report dated 16/10/2023 submitted by the Advocate Commissioner in Contempt Case (Civil) No. 215/2023 is completely erroneous as because there is no whisper in the entire report dated 16/10/2023 of the commissioner about the "Trade name" of the alleged shop which the contemnors had allegedly been operating over the suit property.

7. It is further submitted that this Court has failed to take note of the fact that the report dated 16/10/2023 had been prepared by the concerned commissioner without examining the process server of the court of the Civil Judge, Dibrugarh, who had submitted an earlier report dated 17/12/2022, wherein he had specifically stated that on 17/12/2022 he had found construction of the shop being carried out by the respondents/ contemnors.

8. Learned Senior counsel for the petitioner has further contended that the report dated 16/10/2023 submitted by the commissioner was accepted and relied upon by this Court without allowing or affording the petitioner/ complainant to cross examine the concerned commissioner as provided under Order 26 Rule 10(2) of CPC, in spite of the fact that the counsel for the petitioner has objected to the findings arrived at in the report.

9. According to learned Senior counsel for the petitioner, this Court erred in

mechanically accepting the report of the commissioner by treating the same as gospel truth without verifying the basis of the report in question.

10. By referring the Judgment of ***Midnapore People's Coop Bank Ltd and others vs. Chunilal Nanda and others***, reported in ***(2006) 5 SCC 399***, learned Senior counsel has stressed his argument on the point that in a proceeding for contempt, the High Court can decide whether any contempt of court has been committed and if so what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties. It is also added that by modifying the order of the status quo dated 07/11/2023, this Court has exceeded its contempt jurisdiction. Hence, the learned counsel for the review petitioner prays for review of the order dated 07/11/2023 passed by this Court.

10. Another contention raised by learned Senior counsel for the review petitioner that there can be no quarrel with the proposition that in a contempt jurisdiction, the court will not travel beyond the original judgment and direction and neither would it be permissible for the court to issue any supplementary or incidental directions, which are not to be found in the original judgment and order. The court is only concerned with the wilful and deliberate non-compliance of the directions issued in the original judgment and order by relying on the judgment of Hon'ble Supreme Court vide (2021) 6 Supreme 591(V. Senthur & Anr. vs. M. Vijayakumar & Anr.).

11. In response, learned Senior counsel for the respondent has filed an objection by stating that review petitioner filed a suit being T.S. No. 166/2022 against the respondents for declaration that the review petitioner/ plaintiff in

the suit has the right of pre-emption over the suit premises and for a direction for execution of a sale deed by defendant no. 1 in the suit in favour of the review petitioner. Along with the suit, the plaintiff also filed a petition under Order 39 Rule 1 and 2 of the CPC to restrain the respondent from taking physical possession of the suit premises vide Misc (J) Case No. 12/2022. After hearing both sides, the Civil Judge, Dibrugarh, rejected the prayer for temporary injunction as prayed for by the review petitioner.

12. Being aggrieved by the said order dated 17/11/2022, the review petitioner filed an appeal before this Court being FAO No. 58/2022 and after hearing both the parties, this court disposed of the appeal dated 16/12/2022, directing both the parties to maintain *status quo* over the suit property till disposal of the title suit pending in the court of Civil Judge, Dibrugarh.

13. After disposal of the appeal, when the title suit was being taken by for hearing by the trial court, the plaintiff filed another petition u/s 151 CPC alleging that the defendant No. 1 violated the order of *status quo* passed by this Court on 16/12/2022 and started construction on the suit premises with an intention to open a shop. By the said petition, the plaintiff sought for a direction to the officer-in-charge, Dibrugarh P.S. to visit the site of the suit premises as well as to stop further construction over the suit land. Accordingly, the trial court called for a report from the bailiff to ascertain the exact status of the suit land on the basis of the violation of the *status quo* order. Subsequently, the process server submitted a report before the trial court informing the court that on his visit to the suit land, he found some workers were working inside and outside the suit shop premises and when he asked one Sanjay Agarwala to stop the construction work, he refused to stop the same.

14. According to the learned Senior counsel for the respondent, it is under this background the review petitioner, who is the plaintiff in the suit, filed an application u/s 10 read with section 12 of the Contempt of Courts Act, alleging wilful disobedience of the *status quo* order dated 16/12/2022 passed by this Court in FAO No. 58/2022.

15. Learned Senior counsel for the respondent vehemently argued that the present review petition is not maintainable as per Section 19 of the Contempt of Courts Act, in as much as, it is a settled position of law that if a court, for whatever reason, decides an issue or makes any decision as in the present case relating to the merits of the dispute between the parties in a contempt proceedings, such an order is open to challenge in an intra-court appeal and not by way of a review.

16. It is further argued that to invoke the jurisdiction of this Court under Order 47 of CPC, the review petitioner is required to show that there is an error apparent on the face of the record, which is however not the case of the review petitioner herein. While exercising the jurisdiction under Order 47 read with Section 114 of the CPC, the court may not sit in appeal over its own order. The review is not an appeal in disguise and the power of review should be exercised for correction of a mistake but not to substitute a view.

17. The learned Senior counsel for the respondent has also pointed out that the scope of review under Order 47 Rule 1 read with section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to re-agitate and re-argue the question which has already been addressed and decided. In the present case, though in paragraph 10 of the order dated 07/11/2023 this Court makes certain observation but the same was done in the interest of both

the parties. Accordingly, learned counsel for the respondent has prayed for dismissal of the review petition.

In support of his submission, the learned counsel for the respondent has relied on the following case laws –

- a. Director of Education (BASIC) vs. Lalleswar Singh, reported (2004) 0 Supreme (All) 1857,
- b. Committee of Management, Amar Gandhi Pustkalaya Balika Inter College, Ambedkar Nagar, vs. State of UP and others, reported in (2016) 0 Supreme (All) 1616,
- c. S. Murali Sundaram vs. Jothibai Kannan and others, reported in 2023 SCC Online SC 185.

18. Having heard the learned counsel for the parties and on perusal of the order dated 07/11/2023, passed by this Court, the points to be determined in this case whether review is permissible against the order dated 07/11/2023.

19. Before discussing the issue in question, the orders dated 16/12/2022 and 07/11/2023 are being reproduced below –

16/12/2022

“.....So, considering the entire facts and circumstances of this case, I find that modification of the order passed by the learned court below is deemed necessary and hence I find it justified to direct both the parties to maintain status quo over the suit property till disposal of the title suit. Accordingly, both the parties are directed to maintain status quo as on today and the trial court below is directed to proceed with the case and

shall dispose of the case expeditiously within six months."

07/11/2023

".....Accordingly as a consequential relief in a contempt petition, we modify the earlier order of status quo dated 16/12/2022 to the extent that from the date of the present order i.e., 07/11/2023, no construction, modification, renovation or alteration in any form of the disputed property would be carried forward by the respondent contemnors. But at the same time, as some business was being carried out, the respondent contemnors are permitted to carry on the business in the manner they are conducting without any further alteration of the nature of the business i.e., already being carried on...."

20. From the order dated 16/12/2022, it reveals that both the parties are directed to maintain *status quo* over the suit property. The allegation against the respondent is that they violated the order of the court by making certain construction over the suit premises and therefore a contempt case has been instituted vide Cont. Case No. 215/2023. Accordingly, a report was called for from the trial court regarding status of the suit premises. The process server's report discloses that respondent had undertaken certain construction inside and outside the shop premises. Subsequently, on direction police report was received which reveal that S.I. of police of Milan Nagar outpost visited the disputed premises and found that no further construction was done but the opposite parties opened a hardware shop after repairing front side of the shop. Accordingly, after hearing both sides, this Court modified the order dated 07/11/2023 as aforesaid.

21. While considering the aforesaid question, the scope and ambit of the Court's power under Section 114 read with Order 47 Rule 1 CPC is required to be considered and for that few decisions of the Hon'ble Apex Court are required to be referred to.

22. In the case of **Haridas Das vs. Usha Rani Banik (Smt.) and Others**, reported in **(2006) 4 SCC 78** while considering the scope and ambit of Section 114 CPC read with Order 47 Rule 1 CPC it is observed and held as follows:

*“14. In **Meera Bhanja v. Nirmala Kumari Choudhury**, reported in **(1995) 1 SCC 170** it was held that:*

*“8. It is well settled that 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. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma**, (1979) 4 SCC 389 speaking through Chinnappa Reddy, J. has made the following pertinent observations:*

‘It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review.

The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.

15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

*16. In **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, AIR 1979 SC 1047**, this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court, it was held as under:*

*“It is true as observed by this Court in **Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909** there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.*

17. The judgment in Aribam case has been followed in Meera Bhanja. In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any longdrawn process of reasoning. The following observations in connection with an error apparent on the face of the record in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137 were also noted:

“An error which has to be established by a longdrawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from selfevident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

23. It is also pertinent to mention the observations of the Hon'ble Supreme Court in ***Parsion Devi v. Sumitri Devi*, reported in (1997) 8 SCC 715**. Relying upon the judgments in Aribam and Meera Bhanja, it was observed 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 selfevident 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”

*In the case of **Lily Thomas vs. Union of India, (2000) 6 SC 224**, it is observed and held 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.

24. *Order 47 Rule 1 CPC, which reads as under:*

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 of the court which passed the decree or made the order.

25. On a bare look at the provision, it reveals that an application for review would lie *inter alia* when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In ***Rajendra Kumar v. Rambhai***, reported in ***(2002) 0 Supreme (Raj) 560***, the Apex Court held: "6. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error,

finality attached to the judgment/order cannot be disturbed.”

26. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. *Furthermore, an application for review shall also lie for any other sufficient reason.*

27. 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.

28. In view of the aforesaid legal proposition, it can also be said that review is permissible only to rectify the 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.

29. What would be the necessary tests, for determining whether an

order has been passed in exercise of power under contempt jurisdiction or not, remain no longer *res integra* inasmuch as it is well explained in the case of **Midnapore Peoples' Cooperative Bank**(*supra*), laying down as to which of the directions or decisions will, or will not, be regarded to have been passed in exercise of jurisdiction to punish for contempt and which of the directions or decisions would attract provisions of appeal under Section 19 of the Contempt of Courts Act, 1971, if a party is aggrieved by such an order or decision, the Supreme Court, in paragraph 11 of its decision, in Midnapore Peoples' Cooperative Bank Ltd. (*supra*), observed as under:–

“(I) An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

(II) Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

(III) In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

(IV) Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

(V) If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases)".

30. We, thus, find that the Hon'ble Supreme Court, in Midnapore Peoples' Cooperative Bank Ltd. (supra), has laid down that an appeal, under Section 19 of the Contempt of Courts Act, 1971, would be maintainable either against an order imposing punishment for contempt or where such a direction or decision is incidental to, or inextricably connected with, the order punishing for contempt. The Hon'ble Supreme Court has clarified, in Midnapore Peoples' Cooperative Bank Ltd. (supra), that neither an order declining to initiate a proceeding for contempt nor an order acquitting or exonerating the contemnor is appealable under Section 19 of the Contempt

of Courts Act, 1971, though such an order, in special circumstances, can be challenged under Article 136 of the Constitution.

31. Similarly, holds the Supreme Court, in Midnapore Peoples' Cooperative Bank Ltd. (supra), that it is not appropriate for a High Court to adjudicate or decide any issue relating to the merit of the dispute of the case and that a direction or decision by the High Court, on the merit of a dispute, will not be treated as a direction or order made in exercise of jurisdiction to punish for contempt except when a direction or decision is incidental to, or inextricably connected with, the order of punishment.

32. The Hon'ble Supreme Court further holds in Midnapore Peoples' Cooperative Bank Ltd. (supra), that if a High Court decides an issue or makes any direction relating to the merit of the dispute, the aggrieved person is not remediless and can challenge the same not by way of an appeal under Section 19 of the Contempt of Courts Act, 1971, but by means of intra court appeal if there is a provision of such an appeal and, in absence of any such provision, the aggrieved party can seek Special Leave to Appeal under Article 136 of the Constitution of India.

33. In the context of what has been indicated above, we are, now, required to examine whether the review is permissible against the impugned order dated 07/11/2023 passed by this Court.

34. While considering the rival submissions, which is noted above, it needs to be noted that the exercise of power under the Contempt of Courts Act, 1971, is limited to punishing a person, who has committed contempt of

the order of the High Court or of any subordinate court; for this purpose, the High Court can, indeed, proceed to examine whether any contempt has been committed or not or whether there is willful disobedience of the order passed by High Court and if so, what would be the appropriate punishment.

35. The Contempt of Court is a special jurisdiction to be exercised sparingly and with caution, when an act adversely affects the administration of justice or tends to impede its course or tends to shake public confidence in the fairness and impartiality of the administration of justice. This jurisdiction can be exercised to uphold the majesty of law or dignity of Court. A reference may be made to the case of Supreme Court Bar Association Vs. Union of India and Another, reported in (1998) 4 SCC 409, wherein the Hon'ble Supreme Court observed as follows:—

“42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining ‘the jury, the Judge and the hangman’ and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the

dignity of an individual Judge but to protect administration of justice from being maligned. In the general interest of the community, it is imperative that the authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemnor and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice”.

36. Situated thus, what becomes abundantly clear is that while exercising contempt jurisdiction, a High Court cannot, in the light of the decision in Midnapore Peoples’ Cooperative Bank Ltd. (supra), issue any direction or give any decision on the merits of a dispute between the parties. The Court, sitting in contempt jurisdiction, would not travel beyond the scope of the order, which is alleged to have been violated or disobeyed, nor would the court concern itself whether the original order has been rightly or wrongly passed by the court. The Court cannot take a different view and travel beyond the original order. It would not, ordinarily, give, while exercising contempt jurisdiction, any additional direction or delete a direction. The Court should also refrain from doing anything, which would amount to exercise of its power under review jurisdiction.

37. Elucidating the extent and scope of the power of the Courts in contempt jurisdiction, the Supreme Court, in of **Prithawi Nath Ram Vs.**

State of Jharkhand, reported in (2004) 7 SCC 261, observed as follows:—

“8. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order to give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper perspective in accordance with law afresh. We make it clear that we have not expressed any opinion regarding acceptability or otherwise of the application for initiation of contempt proceedings”.

38. Reiterating the same very principles, as have been laid down in Prithawi Nath Ram (supra), the Supreme Court, in **Bihar Finance Service**

House Construction Coop. Society Ltd. Vs. Gautam Goswami,
reported in ***(2008) 5 SCC 339***, observed as follows:—

“32. While exercising the said jurisdiction this Court does not intend to reopen the issues which could have been raised in the original proceeding nor shall it embark upon other questions including the plea of equities which could fall for consideration only in the original proceedings. The Court is not take a different view or traverse beyond the same. It cannot ordinarily given an additional direction or delete a direction issued. In short, it will not do anything, which would amount to exercise of its review jurisdiction”.

39. In view of the above discussion, this Court is not permitted to opine whether the order dated 07/11/2023 has been rightly or wrongly passed by this Court. As per the decision of Midnapore Peoples’ Cooperative Bank Ltd. (supra) if a High court decides an issue or makes any direction relating to the merit of the dispute, the aggrieved person can challenge the same by means of intra court appeal if there is a provision of such an appeal and in absence of any such provision, the aggrieved party can seek Special Leave to Appeal under Article 136 of the Constitution of India.

40. As the option is open to the aggrieved person as aforesaid, the prayer of the petitioner cannot be entertained under Order 47 and section 114 of CPC. In the result, the review application is dismissed and disposed of accordingly.

JUDGE