

Court No. - 13

Case :- CIVIL MISC REVIEW APPLICATION DEFECTIVE No. - 72 of 2024

Applicant :- Maya Ram And 2 Others

Opposite Party :- State Of U.P. Thru. Secy. Revenue U.P. Govt. Civil Sectt. Govt. Lko And 11 Others

Counsel for Applicant :- Anoop Vajpayee, Atul Kumar Yadav

Hon'ble Saurabh Lavania, J.

(C.M.Application No. 1 of 2024)

Heard learned Counsel for the applicant.

Considering the averments made in the affidavit filed in support of application under consideration, the same is *allowed*.

Accordingly, the delay in filing the present review application is hereby condoned.

Order of Review Application

1. Heard.
2. Present review application under Chapter V Rule 12 of the Allahabad High Court Rules, 1952 has been preferred by the petitioner in relation to final judgment and order dated 19.03.2024 passed in Writ-C No. 2612 of 2024 (Maya Ram and Others Versus State of U.P. and Others), which reads as under:-

""Heard.

The present petition has been filed for the following main reliefs:-

"i. Issue a writ, order or direction in the nature of CERTIORARI thereby quashing the impugned order dated 15.02.2024 passed by the Up Ziladhikari Sawayajpur, District Hardoi by means of which the appeal No.RST/1709/2023 (Santosh Kumar and others versus Ram Avtar) U/S 35(2) of Uttar Pradesh Revenue Code, 2006 contained as ANNEXURE NO.1 to this writ petition.

ii. Issue a writ, order or direction in the nature MANDAMUS thereby commanding the Opp. party No.6 to 12 not to disturb the peaceful possession of the petitioners during pendency of the writ petition."

Taking note of the statutory remedy available to the petitioners by means of revision under U.P. Revenue Code, 2006., this Court is not inclined to interfere.

The petition is disposed of with liberty available to the petitioners to approach the revisional authority. "

3. The grounds for seeking review of judgment and order dated 19.03.2024 taken in the present application, are extracted hereinunder:-

"a. BECAUSE, the impugned order dated 15.2.2024 passed by passed by the Up Ziladhikari Sawayajpur, District Hardoi is totally illegal, unjust and improper.

b. BECAUSE, on 20.2.2024, when the Review petitioners went to the court, then it reveals that today is Tahsil Divas and Up Ziladhikari is busy in Tahsil Divas, then next date is fixed for 27.02.2024.

c. Because, when the review petitioners appeared before the court on 27.02.2024, then the Peshkar told that your case has been decided on 15.2.2024, and hearing the same the Review petitioners became shocked, because the said case was initially fixed for 20.2.2024, but due to Tahsil divas the said case was again fixed for 27.02.2024, but when the petitioner reached before the court then found that the said case has decided on back date i.e. on 15.02.2024, which shows the completely abuse the process of law.

d. BECAUSE, the Opp. party No 3 has completely exceeded his jurisdiction and passed the order on back date, while the case was fixed for 27.2.2024, but the order was passed on 15.02.2024 which is completely abuse the process of law.

e. BECAUSE, the Peshkar has denied to provide the cause list of 20.2.2024& 27.2.2024.

f. BECAUSE, impugned order dated 15.2.2024 passed by the Up Ziladhikari Sawayajpur, District Hardoi is passed with ulterior motive as such same is sheer abuse of process of law and court not sustainable in the eye of law.

g. BECAUSE the above noted case was fixed for 20.2.2024, and again fixed for 27.2.2024, and when the petitioner appeared before the court, then it was found that the said case was decided on back date behind the petitioner, as such the said order is an ex-parte order.

h. BECAUSE, the case was listed on 9.02.2024 before the court, but on same day there was proposal of the Great Lawyers Association Sawayajpur, Tahsil, Sawayajpur, District Hardoi. And according to the order sheet dated 9.02.2024 it has been mentioned that the case was called out 09.02.2024, and both parties were heard, and next date is fixed for 15.02.2024 for order, but from bare perusal of the order sheet no one present there nor signature of any one is mentioned, and also from perusal of the order sheet it shown that the writing of every date has been different.

i. BECAUSE, according to the cause listed the said case was listed on 9.02.2024 at serial No. 82 but from perusal of the order sheet no date of 9.2.2024 has been mentioned in the order sheet and dates shown that the case was listed on 1.2.2024, there after listed on 15.2.2024.

j. BECAUSE, there was a proposal on 9.2.2024 by the Great Lawyers Association Sawayajpur, Tahsil, Sawayajpur, District Hardoi, so the no court has run on 9.02.2024.

k. BECAUSE, the counsel of the petitioners applied for order sheet before the court of Up Ziladhikari Sawayajpur, District Hardoi, but no order sheet was provided till today to the review petitioner."

4. After discussing a series of decisions on review jurisdiction in ***Kamlesh Verma v. Mayawati*** reported in ***(2013) 8 SCC 320***, the Hon'ble Supreme Court has observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising

review jurisdiction were succinctly summarized in the captioned case as below:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words “any other sufficient reason” has been interpreted in Chajju Ram v. Neki¹⁷, and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius¹⁸ to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.²⁵.

20.2. When the review will not be maintainable:—

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

5. In **Ram Sahu (Dead) Through LRs v. Vinod Kumar Rawat** reported in 2020 SCC OnLine SC 896, the Hon'ble Supreme Court citing previous decisions and expounding on the scope and ambit of Section 114 read with Order XLVII Rule 1, has observed that Section 114 CPC does not lay any conditions precedent for exercising the power of review; and nor does the Section prohibit the Court from exercising its power to review a decision. However, an order can be reviewed by the Court only on the grounds prescribed in Order XLVII Rule 1 CPC. The said power cannot be exercised as an inherent power and nor can appellate power be exercised in the guise of exercising the power of review.

6. Recently the Hon'ble Apex Court in the case of **Sanjay Kumar Agarwal vs. State Tax Officer (1) and Another 2023 SCC OnLine SC 1406**, observed as under:-

9. In the words of Krishna Iyer J., (as His Lordship then was) “a plea of review, unless the first judicial view is manifestly distorted, is like asking for the Moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result..... A review in the Counsel's mentation cannot repair the verdict once given. So, the law laid down must rest in peace.”

10. It is also well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

11. In *Parsion Devi v. Sumitri Devi*, this Court made very pivotal observations:—

“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.”

12. Again, in *Shanti Conductors Private Limited v. Assam State Electricity Board*, a three Judge Bench of this Court following *Parsion Devi v. Sumitri Devi* (*supra*) dismissed the review petitions holding that the scope of review is limited and under the guise of review, the petitioner cannot be permitted to reargue and reargue the questions which have already been addressed and decided.

13. Recently, in *Shri Ram Sahu (Dead) Through Legal Representatives v. Vinod Kumar Rawat*, this Court restated the law with regard to the scope of review under Section [114](#) read with Order XLVII of [CPC](#).

14. In *R.P. (C) Nos. 1273-1274 of 2021 in Civil Appeal Nos. 8345-8346 of 2018* (*Arun Dev Upadhyaya v. Integrated Sales Service Limited*), this Court reiterated the law and held that:—

“15. From the above, it is evident that a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order [XLVII Rule 1 CPC](#). An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.”

15. It is very pertinent to note that recently the Constitution Bench in *Beghar Foundation v. Justice K.S. Puttaswamy (Retired)*, held that even the change in law or subsequent decision/judgment of co-ordinate Bench or larger Bench by itself cannot be regarded as a ground for review.

16. The gist of the afore-stated decisions is that:—

(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) 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.

(iv) In exercise of the jurisdiction under Order [47 Rule 1 CPC](#), it is not permissible for an erroneous decision to be “reheard and corrected.”

(v) A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise.”

(vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.

7. In the case of ***S.Madhusudhan Reddy Vs. V.Narayana Reddy and Others***, reported in **2022 SCC OnLine SC 1034**, the Hon'ble Apex Court observed as under:-

"As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1

CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as “for any other sufficient reason”. The said phrase has been explained to mean “a reason sufficient on grounds, at least analogous to those specified in the rule” (Refer : Chajju Ram v. Neki Ram and Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius)."

8. Upon due consideration of the grounds as also the law related to review petition, according to which the review is by no means an appeal in disguise and the scope of review is limited as also the judgment dated 19.03.2024, this Court finds no force in the present review petition for the reasons that while passing the judgment dated 19.03.2024 this Court considered the relevant statutory provision as also the facts pleaded in the petition thereafter declined to entertain the petition on the ground of availability of statutory remedy to the petitioner and the availability of statutory remedy has not been disputed in the present review application and being so this Court finds no error apparent on the fact of record. Accordingly, the review application is ***dismissed.***

9. No order as to costs.

Order Date :- 01.05.2024

Jyoti/-