

Neutral Citation No. - 2024:AHG-LKO:34787

Court No. - 13

Case :- CIVIL MISC REVIEW APPLICATION DEFECTIVE No. - 76 of 2024

Applicant :- Mangal

Opposite Party :- State Of U.P. Thru. Its Prin. Secy. Deptt. Of Revenue,Lko. And 6 Others

Counsel for Applicant :- Ashutosh Misra

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 order dated 17.01.2024 passed in petition i.e. Matters under Article 227 No. 173 of 2024 (Shriram and Others Versus State of U.P. and Others), which reads as under:-

"Heard learned counsel for the parties.

In view of order proposed to be passed, issuance of notice to the private-respondents is hereby dispensed with.

By means of this petition, the petitioners have sought the following main reliefs:-

"(i) Issue an order or direction to the opposite parties no. 2 (Consolidation Officer Naveen Gonda) to consider and decide the Case/Objection bearing no. 182/2023 Inder and others Vs Badri and others under section 9A(2) U.P.CH Act Village-Nandour, Pargana-Gawrich, Tehsil- Colonelganj, District-Gonda, pending before opposite party no. 2 (Consolidation Officer Naveen Gonda) initially from 1990 and after

reconstruction order from 2012 more expeditiously within a stipulated time as prescribed by this Hon'ble Court, after concluding the evidence of the private opposite party no. 4 to 12 by giving him the last opportunity to complete his evidence on the fixed next coming date or any subsequent date as prescribed by this Hon'ble Court, as contained in Annexure no. 1 to this petition.

(ii) Issue an order of status quo in respect of the physical possession and may further very kindly be pleased to restrain the opposite party no. [number] from alienating the property in dispute till the final disposal of the case/objection pending before opposite party no. 2."

A conjoint reading of para 12 of this petition and the order dated 26.06.2019 passed by the respondent No. 2/Consolidation Officer Naveen Gonda, which is at page 75 of the paper book, it appears that the objection in issue under Section 9-A(2) of U.P. Consolidation of Holdings Act, 1953 (in short "Act of 1953") is pending consideration since 1990 and it further appears from the copy of the order sheet of the case in issue on record particularly the order dated 12.11.2014 that the case in issue is at the stage of evidence of the opposite parties.

Considering the aforesaid particularly the period of the pendency of the case in issue, this Court is of the view that the main prayer sought in this petition is liable to be acceded. Accordingly, the present petition is disposed of with a direction to the respondent No. 2 to consider and decide the case/objection in issue expeditiously after affording full opportunity of hearing to the parties to the litigation and without granting any adjournment to either party preferably within a period of six months from the next date fixed in the case. The authority concerned shall make all endeavour to conclude the proceedings within the time specified herein on day to day basis.

It is made clear that the Court has not examined the case of either party on merits and the authority concerned shall be free to decide the matter strictly in accordance with law.

With the aforesaid, the petition is disposed of."

3. The grounds for seeking review of judgment and order dated 17.01.2024 taken in the present application, are extracted hereinafter:-

"(i) Because, the respondent No. 3 to 7 filed the petition under Article 227 of the Constitution of India with concealing the material facts and mislead to this Hon'ble Court and this Hon'ble court was pleased and disposed of the petition vide order dated 17.01.2024.

(ii) Because, the respondent Nos. 3 to 7 obtained the order dated 17.01.2024 by this Hon'ble court and want to make presser upon the trial court i.e. O.P. No.2 while the some relevant issue is still pending before the this Hon'ble court as well as Learned Deputy Director of Consolidation and the respondent Nos. 3 to 7 knowingly not pursue the main issue and by hook and crook want to decide the objection U/S 9 A (2) pending before the O.P. No.2 which is not maintainable.

(iii) Because, the predecessor of petitioner as well as private respondents were jointly made property in village and occupied upon the same and also recorded in panchshala after the compromise wetween the parties and order was passed on 01.08.1981 in the proceeding under section 543) of land Revenue Act, and recorded the joint tenure holder on Khata No. 217, after some time during consolidation as per the name of the both the parties were recorded on basic Years Khata No. 217 the Consolidation officer i.e. O.P. No. 2 decided the suit for the Partition of the land of Khata No. 217 in case No. 1018 and 1019 was also finally decided on 21.02.1990.

(iv) Because, the order dated 21.02.1990 was passed in the present of the all the parties and after some time the private respondents filed another objection Us-9 A (2) of UP. CH. Act 1953 before the OP. No.2 while its barred with principal of Res-Judicata U/s 11 of CPC and also in the violation of section 115 of the Indian Evidence Act i.e. principal of law of estoppel.

(v) Because the private respondents never challenged the order dated 21.02.1990 before any competent court while they filed another objection before the same court which is not maintainable and due to ill intention they disappeared the paper book, against that the review petitioner represented for search the paper book then the private respondents moved an application to re-construct the paper book.

(vi) Because, the petitioner made objection against the maintainability of the Objection which had been rejected by

the O.P. No.2 vide his order dated 26.07.2017 against that the petitioner filed revision before the Deputy Director Consolidation Gonda in which the private respondents were appeared and filed objection and same is still pending.

(vii) Because petitioner moved an application on 17.12.2017 before the OP. No.2 stop the proceeding till disposal of the revision pending before the D.D.C. Gonda in which the O.P. No.2 passed the order dated 21.02.2018 and observed that the disposal of the application on next dated while on next date he proceeded for the evidence.

(viii) Because against the aforesaid action of the OP. No.2 petitioner filed an application for framing the addition issue regarding the maintainability on jurisdiction point in which the OP. No.2 framed some additional issue and decided that these issued will be decided at the time final disposal against that the petitioner approached before this Hon'ble court by filling the Writ petitioner Bearing No. WRIB NO. 1099 of 2023 and same is still pending.

(ix) Because it is also relevant here that the private respondents have full knowledge about the pendency of the writ petition before this Court and also filed objection before the OP. No.2 and on the other hand with concealment about the above facts filed petition Under Article 227 of Constitution of India before this Hon'ble court and obtain the order dated 17.01.2024.

(x) Because the petitioner filed an application before the O.P. No.2 to stop the further proceeding on 13.12.2023 and after that the private respondents filed before this Hon'ble court and obtained the order with concealment of the writ petition pending before this Hon'ble Court.

(xi) Because private respondents filed objection the application of the petitioner dated 13.12.2023 on 24.01.2024 and the petitioner file a detail reply and averted entire facts and also maintainability of objection on 06.02.2024 but the respondent No.2 without considering the facts and law rejected the application of the petitioner and with taking shelter of order dated 17.01.2024 of this Hon'ble court without strictly compliance of the order dated 17.01.2024 adamant to decide the objection without his jurisdiction.

(xii) Because, if this Hon'ble Court may not review the impugned order, the petitioner will be deprive from justice and his fundamental rights."

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 Poulose 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 negatived.”

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 reagitate 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:*

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“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 17.01.2024, this Court finds no force in the present review petition for the reasons that while passing the judgment dated 17.01.2024 this Court considered the relevant statutory provisions as also the facts pleaded in the petition thereafter disposed of the same with a direction to respondent No. 2 to consider and decide the case/objection in issue expeditiously, say within a period of six months from the next date fixed in the case and being so this Court finds no error apparent on the face of record. Accordingly, the review application is ***dismissed***.

9. No order as to costs.

Order Date :- 06.05.2024

Arun/-