

Court No. - 7

Case :- CIVIL MISC REVIEW APPLICATION DEFECTIVE
No. - 92 of 2024

Applicant :- M/S Ivc Logistic Ltd. Thru. Sri K.S. Singhal
Founder/President And 2 Others

Opposite Party :- The State Of U.P. Thru. Its Prin. Secy.
Labour Deptt. Lko. And 2 Others

Counsel for Applicant :- Angrej Nath Shukla

Hon'ble Alok Mathur,J.

**Order on Civil Misc. (Delay Condonation) Application No. 1
of 2024**

1. Learned counsel for the applicant has pressed the application for condonation of delay in filing the present review petition.
2. It is submitted by learned counsel for the applicant that it took some time to discuss the present case with the concerned authorities to decide whether review application against order dated 20.02.2024 be filed. The decision making process took some time and when decision was taken to file review petition, the matter was referred to the Panel Law Firm at Delhi for drafting the present review application. The queries of Law Firm were answered by the petitioner company on 19.04.2024, thereafter the review petitioner was drafted and sent to the petitioner company on 05.05.2024 and thereafter same was forwarded to the local counsel on 16.05.2024, for filing the same. It is submitted that the delay caused in filing the review petition is due to above reason and is not intentional or deliberate.
3. Perused the application for condonation of delay.
4. Cause shown for delay in filing the review petition is deemed to be sufficient. Application for condonation of delay is allowed. Accordingly, delay in filing review petition is condoned.

Order on Review Petition

1. Heard Sri Angrej Nath Shukla, learned counsel for the petitioner.
2. By means of present review application the applicant has

sought review of judgment and order dated 20.02.2024, passed in Writ - C No. 1711 of 2024 - IVC Logistic Ltd. and Others Vs. State of U.P. and Others.

3. At the very outset it is noticed that initially the writ petition was filed and argued by Mohd. Yaseen, Advocate and after hearing the matter and considering the arguments raised before this Court, the writ petition was dismissed by order dated 20.02.2022.

4. Present review petition has been filed by subsequent counsel namely Young Agents (JYJ) which is a law firm as well as Sri Angrej Nath Shukla. There are several judgments according to which review petition should not be filed and argued by fresh counsel.

5. It has been submitted by learned counsel for the applicant that prayer made in the writ petition was itself defective and that the defect was caused due to faulty drafting by the previous counsel and instead of seeking setting aside of order dated 29.11.2023, prayer was made for direction in the nature of certiorari "commanding" the award dated 29.11.2023 passed in the P.W. CAs No. 03 of 2020 (Ashish Kumar Singh Vs. M/s I.V.C. Logistic Ltd. And Others) by the Opposite party No. 2/the Presiding Officer/Deputy Labour Commissioner, Basti Division, Basti, District - Basti under the Payment of Wages Act, 1936, against the petitioner's Company to deposit amount of Rs.4,36,000/- within thirty days in default 12% interest. Apart from above, it has been submitted that before the Labour Court the petitioner had adduced all the documents which were not considered by them and accordingly the application for review deserves to be allowed.

6. It is next submitted by learned counsel for the applicant that matter pertains to Basti and the writ petition should have been filed before the Allahabad Bench of this Court rather than before the Lucknow Bench and on this ground also the review has been sought of the judgment dated 20.02.2024. No other ground has been argued.

7. It is noticed that writ petition was filed for the following reliefs :-

"I. To issue writ, order or direction in the nature of certiorari "commanding" the award dated 29.11.2023 passed in the P.W. CAs No. 03 of 2020 (Ashish Kumar Singh Vs. M/s I.V.C. Logistic Ltd. And Others) by the Opposite party No. 2/the Presiding Officer/Deputy Labour Commissioner, Basti Division, Basti, District - Basti under the Payment of Wages

Act, 1936, against the petitioner's Company to deposit amount of Rs.4,36,000/- within thirty days in default 12% interest as contained in Annexure No. 1 to the writ petition.

II. To issue a writ, order or direction in the nature of Mandamus directing the opposite parties to not recover the amount of Rs.4,36,000/- passed in the P.W. Case No. 03 of 2020 by the Opposite Party No. 2/the Presiding Officer, District - Basti under the Payment of Wages Act, 1936 against the petitioner's Company.

III. To issue such other writ, order or direction which this Hon'ble Court may deem fit , just and proper under the facts and circumstances of the case.

IV. To allow the present writ petition with costs."

8. Undoubtedly, there was typographical error but the said error was ignored considering that the writ petition was filed assailing the order of the Labour Court dated 29.11.2023. The applicant seeks to take benefit of their own mistake at the time of filing writ petition.

9. From perusal of defect as pointed out by the learned counsel for the applicant is not such a defect which could have led this Court to reject the prayer sought by the petitioner which even with the word "commanding" it was clear that infact writ of certiorari has been sought for quashing order dated 29.11.2023 and merely because due to typographical error occurred in the prayer cause, same does not change the nature of relief made by the petitioner.

10. The second ground urged is that the writ petition was cognizable before the Allahabad Bench of this Court and not at Lucknow. In this regard it is noticed that the petitioner is *dominus litus* and he has full discretion to choose the forum and the Court before which he prefers to adjudicate his grievance. The petitioner had filed the writ petition which was supported by an affidavit of one Ajeet Mishra who claims that he was authorised for filing the said affidavit on behalf of petitioner firm.

11. There is no denial in the present review application that the said deponent was not authorised and vakalatnama enclosed with the writ petition also was signed by the Director of the petitioner firm namely K.S. Singhal who according to the description in the array of parties is Chief Managing Director of the petitioner firm. Accordingly, it cannot be said that the said affidavit was unauthorised or that filing before the Lucknow

Bench of the Allahabad High Court was misconceived.

12. Again in this regard surprisingly the petitioner is trying to take advantage of the fault on their part and themselves amplifying their own errors to assail the judgment passed on their petition, where prima-facie as no such fault exists.

13. This Court has also perused the impugned order and finds that all the arguments raised by learned counsel for the petitioner were duly considered and the writ petition was dismissed.

14. This Court in the matter of **Mohd Kaleem Vs. Sumitra Devi and Others, 2021 (144) ALR 651**, 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."

15. This issue again came before this Court in **Ramesh Kumar Sharma Vs. Gool Poput and Others, 2021 (8) ADJ 123** 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."

16. This Court in **Kaniz Fatma & Others Vs. Additional District Judge & Others [2008 (70) ALR 361]**, has taken similar 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."

17. 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 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."

18. 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."

19. 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."

20. In the aforesaid circumstances as well as case law discussed herein above, the review application filed by the applicant is misconceived and considering that they have sought assailing order of this Court on the grounds which are based on their own faults, is extreme and unbecoming step which is not appreciated by this Court and on the face of it is false and misconceived.

21. Accordingly, the review petition is **dismissed** with cost of Rs.5000/-, to be deposited with the Senior Registrar of this Court within next two weeks. If the said amount is not deposited the said amount shall be recovered as arrears of land revenue.

Order Date :- 24.5.2024

A. Verma

(Alok Mathur, J.)