

Court No. - 19

Case :- CIVIL MISC REVIEW APPLICATION No. - 82 of 2024

Applicant :- Amar Nath And Another

Opposite Party :- Deputy Director Of Consolidation,
Sultanpur And Others

Counsel for Applicant :- Vibhanshu Srivastava, Nimit
Srivastava

Counsel for Opposite Party :- Narendra Gupta

Hon'ble Manish Kumar, J.

1. Heard.

2. The present review application has been filed for review of the judgment dated 13.05.2024 passed in Writ B No. 3670 of 1988 (Amar Nath and Ors. vs. Deputy Director of Consolidation and Ors.).

3. The instant review application has been preferred by Sri Vibhanshu Srivastava and Sri Nimit Srivastava, learned counsels for the applicants.

4. Sri Vibhanshu Srivastava has sent his illness slip whereas Sri Nimit Srivastava is present before this Court.

5. On being asked from Sri Nimit Srivastava, learned counsel for the review applicants whether a review petition could be filed by another counsel, who had not appeared in the writ petition, he replied that the present review petition has been filed after obtaining no objection certificate from the earlier counsel Sri P.V. Chaudhary, who had appeared in the writ petition.

6. The law is settled by a Division Bench of this Court in the case of **Krishna Pathak vs. Vinod Shankar Tiwari and Ors.** passed in Civil Misc. Review Application No. 89594 of 2004 in Special Appeal No. 534 of 2003, dated 25.02.2005 by placing reliance upon the judgments of Hon'ble Supreme Court and in the case of **Jag Mohan Agarwal vs. Smt. Kanchan Kumari Jain** passed in Civil Misc. Review Application no. 432 of 2023 dated 31.10.2023 by placing reliance upon catena of judgments wherein it has also been held that 'No Objection Certificate' would not suffice to appear or to argue the review application by a newly engaged subsequent counsel.

7. The law is settled by the Hon'ble Supreme Court in the case of **Tamil Nadu Electricity Board and Anr. vs. N. Raju Reddiar and Anr. [AIR 1997 SC 1005]** The relevant paragraph of the judgment is quoted hereinbelow:-

It is a sad spectacle that a new practice unbecoming and not worthy of or 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 24-4-1996. 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 note that the 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 of 1996 in CA No. 1867 of 1992, a Bench of three Judges to which one of us, K. Ramaswamy, J., was a member, had held as under:

"The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-Record when the appeal 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 not be in the interest of the profession to permit such practice. That apart, 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."

(emphasis laid)

8. From the abovementioned paragraph, the law which has been settled by the Hon'ble Supreme Court is that no objection certificate from the erstwhile counsel has entitled the subsequent counsel engaged after the judgment to file the review petition but the same is to be seen in the light of the observation made in the same paragraph of the judgment that the subsequently engaged counsel for filing the review 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 re-hearing of the appeal against a judgment passed, otherwise the Advocate On Record/Advocate who originally filed the writ petition is answerable to the Court.

9. This Court in the case of **Siddheshwar Mishra vs. State of U.P. and Ors. [2006 (9) ADJ 427]** has reiterated and settled the provisions of law and held that review application filed by subsequent counsel is not

maintainable. Relevant paragraph 14 of the aforesaid case is quoted hereinbelow:-

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.....

(emphasis laid)

10. In the present review petition, the grounds were taken by making allegations against the original counsel engaged initially, who has neither filed the review application nor has appeared in the Court to admit or deny allegations made against him. It would lay down a bad precedent to allow such successive review application by a subsequently engaged counsel by making allegations against the original counsel and this is a settled position in the case of **Kaniz Fatma & Others Vs. Additional District Judge & Others [2008 (70) ALR 361]**, in which Court has taken very same 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."

11. The Division Bench of this Court in the case of **Krishna Pathak (supra)** has held that the subsequent counsel is not permissible to argue review petition when the initial petition was not argued by him.

12. Very recently, this Court in the case of **Jag Mohan Agarwal (supra)**, after relying upon the judgments mentioned above has held that mere obtaining a 'No objection Certificate' would not suffice for filing of review application by a newly engaged subsequent counsel. The relevant paragraph no. 9 of the aforesaid judgment is quoted hereinbelow:-

"9. Learned counsel for applicant has placed reliance upon the judgment of this Court in the matter of Sharda Prasad Mishra (supra). From the perusal of the said judgment, it is apparently clear that it is not in favour of applicant rather against him. The only fact which is pointed out by learned counsel for applicant is about "No Objection Certificate". In the present case, there is no "No Objection Certificate" in favour of applicant from earlier counsel. Even otherwise, mere

obtaining of "No Objection Certificate" is not suffice for filing of review application by a subsequent counsel....."

13. As per the settled proposition of law discussed above, the recall/review application can be filed only by a counsel, who had argued the case and not by a subsequent counsel, who is engaged after the decision.

14. In view of the discussions made hereinabove, the review application is dismissed.

Order Date :- 4.7.2024
Nitesh