

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 19.09.2025
Pronounced on: 16.10.2025

RP No.60/2024 IN
LPA No.81/2024
CM No.5985/2024

ABDUL HAQ BANDAY AND ANR. ...Petitioner/Appellant(s)

Through: Mr. M. Sultan, Advocate.

Vs.

UNION TERRITORY OF J&K AND ORS. ...Respondent(s)

Through: Mr. Altaf Haqani, Sr. Advocate with
Mr. Asif Wani, Advocate.
Mr. Ruaani A. Baba, Advocate

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE
HON'BLE MR JUSTICE RAHUL BHARTI, JUDGE

ORDER

Per Javed Iqbal, J.

1. Two petitioners in the instant review petition are seeking review of judgment dated 28-08-2024 passed in LPAOW No.81/2024 which was preferred by reference to judgment and order dated 12.02.2024 passed by learned writ court in WP(C) No.148/2023.

2. Before proceeding to advert to the petition in hand, a brief background of the case is delineated hereunder: -

(i) Petitioners herein maintained WP(C) No.148/2023 supra seeking therein the following reliefs: -

a. Writ of Certiorari be issued in favour of the petitioners and against the respondent, quashing of the impugned order dated 20.09.2022 passed by the Respondent No.2-Chief Executive Officer J&K Waqaf Board Srinagar.

b. Writ of Mandamus, commanding the respondents to disburse the amount withheld accumulated Nishan Dihan to the petitioners and also further Nazra-Niaz due to the petitioners.

(ii) The aforesaid reliefs came to be prayed on the premise that the respondent 2 herein-Chief Executive Officer, J&K Muslim Waqf Board had issued an order on 29-09-2022 in terms whereof the purported claim of the petitioners herein to the share of “**Nazrana of Asar-e-Sharif, Hazratbal**”, came to be rejected despite being the descendants of **Nishan Dehandah**, namely Ghulam Mohd Banday having been succeeded by the petitioners’ father namely Ghulam Hassan Banday as the said Ghulam Mohd Banday had died issueless, and that the said claim of the petitioners herein to the said Nazrana had even been settled earlier in a suit wherein an ex-parte judgment and decree had been passed in their favour on 23-05-1991 besides, others against the father of the respondent No.3 herein-Dr.Manzoor Ahmad Bandey while stating further that the

order dated 29-09-2022 impugned in the writ petition had been issued pursuant to an order of this Court dated 19-05-2022 passed in WP(C) No.655/2021, titled as “*Abdul Haq Banday Vs. UT of J&K and Ors*”

- (iii) The writ petition supra being WP(C) No.148/2023 filed by the petitioners came to be allowed by the writ court in terms of judgment and order dated 12-02-2024, when the order dated 29-09-2022 under challenge therein came to be quashed, upholding the claim of the petitioners herein qua the share of Nazrana in question.
- (iv) The said judgment and order dated 12-02-2024 came to be challenged by the respondent 3 herein-Dr. Manzoor Ahmad Bandey in an intra court appeal LPA No.81/2024 supra which came to be allowed. The impugned judgment and order dated 12-02-2024 came to be set-aside, and consequently the writ petition WP(C) No. 148/2023 of the petitioners came to be dismissed, with costs to the tune of Rs. 20,000/-, fundamentally on the basis of a preliminary objection of the respondent 3 herein-Dr.Manzoor Ahmad Bandey that the petitioners had suppressed and concealed the material facts relating to an ex-parte judgment and decree dated 23-05-1991, as the said judgment and decree when put to execution had been held in-executable by an

order of the executing court, which order subsequently was even upheld in terms of an order dated 01-06-2005 of this Court passed in civil revision No. 40/2004 filed by the petitioners herein.

3. Petitioners herein are intending to maintain the instant review petition on the following grounds: -

a) The Hon'ble Supreme Court in a case Arenuma Burwa V/S Union of India and Ors reported in (2007) 6 SCC 120 has held:

"To enable the court to refuse to exercise discretionary jurisdiction on suppression must be of material fact, what would be material fact would depend upon facts and circumstances of each case, material fact would mean material for the purpose of determination of lis. The logical corollary whereof would be whether the same was made for grant or denial of relief. If the fact suppressed is not material to lis the court may not refuse to grant relief in exercise of discretionary jurisdiction"

b) That the Hon'ble Division Bench has held:

'failure to disclose order dated 01-06-2005 passed by the Hon'ble High Court in CR No.40 captioned Abdul Ahad Banday & others V/S Nazir Ahmad Banday in WP(C) No. 148/2023 titled Abdul Ahad Banday & Another V/S UT of J&K & others amounted suppression of material fact as its withholding may hold direct bearing in grant/refusal of the reliefs prayed, being unclean, therefore entailed dismissal of the writ petition.

That the order dated 01-06-2005 passed in CR No. 40/2005 is an order passed in a civil revision petition filed against an order of dismissal in execution petition, passed by the court of

City Munsiff Srinagar for reasons of non disclosure of total amount to be shared as well as the ratio of sharing of Nazro Niyaz.

It is respectfully submitted both these infirmities stood cured with the passage of time as the order (Annexure III) of LPA gives the specific amount assigned to Group C of Category A of Banday Group and vide Annexures V, VI & VII of LPA, the sharing ratio of the Co-sharers of the parties to the LPA stands disclosed, therefore, the character of being material fact which holds bearing for grant or refusal of the writ are Annexures V, VI & VII of LPA and not order passed in CR No.40/2005, which exist placed on record, have not been suppressed, therefore, holding unclear on suppression of a fact, which is not material in light of Annexures III, V, VI & VIII of LPA. Thus an error has emerged in the order dated 28-08-24, which is craved to be reviewed in the interests of justice.

c) That the grievance projected through WP (C) No.148/2023 is failure on the part of the appellant to collect the money from the office of Waqf Board and to disburse the same to the writ petitioners is the only grievances projected, the entitlement of sharing is no more in dispute nor is sought in the prayer of the writ. Therefore, holding the order passed by the Hon'ble High court in CR No. 40/2004 material fact is not correct, thus an error has emerged which is craved to be reviewed in the interests of justice.

4. Objections to the review petition have been filed by contesting respondent No.3 herein-Dr.Manzoor Ahmad Bandey wherein review petition is being opposed and its dismissal is being sought, primarily on the premise that the review petition is misconceived and same does not disclose at all any error apparent on the face of the record or any other reason which could justify the review of the judgment in reference.

Heard learned counsel for the parties and perused the record.

5. Before proceeding further in the matter, it would be appropriate to refer hereunder the relevant provisions of law relating to the doctrine of review, as also the relevant judgements passed by the Apex Court in this regard.

6. **Rules 65 and 66 (4)** of Jammu and Kashmir High Court Rules of 1999 deals with the provision of Review and provide as under:

65. Application for review of judgment:

The court may review its judgment or order but no application for review shall be entertained except on the ground mentioned in order XL VII Rule 1 of the Code.

66(4) The application for review shall be disposed of by the court in accordance with the provisions of Order XL VI of the Code.

A bare perusal of the aforesaid Rules would show that same postulate that the court may review its judgment or order upon an application which has to be entertained only and exclusively on the grounds mentioned in Order XLVI of CPC.

7. The Apex Court in case titled as **Inderchand Jain Vs. Motilal reported in 2009 (14) SCC 663** has at para 7 provided as under:

"7. Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a Civil Court and consequently by the appellate courts. The words "subject as aforesaid" occurring in Section 114 of the Code means subject to such conditions and limitations as may be prescribed as appearing in [Section 113](#) thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under:

"17. The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in 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 to the court which passed the decree or made the order."

8. Further the Apex court in case titled as "**Lily Thomas v. Union of India**" reported in **(2000) 6 SCC 224**, at para 56 has held as under: -

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise."

9. The Apex Court also in case titled as "**Shri Ram Sahu (Dead) through LRs and others vs. Vinod Kumar Rawat**" reported in **2021 (13) SCC 1** has at paras 33 and 34 held as under:-

33. *In the case of [State of West Bengal and Others vs. Kamal Sengupta and Anr.](#), (2008) 8 SCC 612, this Court had an occasion to consider what can be said to be "mistake or error apparent on the face of record". In para 22 to 35 it is observed and held as under:*

"22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not selfevident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1

CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

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26. [In Moran Mar Basselios Catholicos v. Mar Poulse Athanasius](#) (supra) this Court interpreted the provisions contained in the Travancore Code of Civil Procedure which are analogous to Order 47 Rule 1 and observed:

“32. ... Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.

It may allow a review on three specified grounds, namely,

(i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant’s knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason.

It has been held by the Judicial Committee that the words 'any other sufficient reason' must mean 'a reason sufficient on grounds, least analogous to those specified in the rule'."

27. [*In Thungabhadra Industries Ltd. v. Govt. of A.P.*](#) (supra) it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected.

28. [*In Parsion Devi v. Sumitri Devi \(Supra\)*](#) it was held as under: (SCC p. 716) "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'. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

34. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section

114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review.

10. Thus having regard to above, it can safely be concluded that normal rule of law is that once a judgment is pronounced or an order is made, the court becomes *functus officio* (ceases to have control over the matter) and, as such, a judgment or an order becomes final and cannot be altered, changed, varied or modified. However, the doctrine of the review is an exception to this principle of law and can be allowed in certain circumstances only as is provided under Section 114 read with Order 47 CPC.

11. It is also relevant to mention here that a right of the review has been held by courts as both substantive as well as procedural, and as a substantive right has to be conferred by law either expressly or by necessary implication and that there can be no inherent right of review, but as a matter of procedure every court can correct an inadvertent error which has crept in a judgment or

order due to procedural defect or arithmetical or clerical error or by misrepresentation or fraud of a party to the proceeding.

12. Keeping in mind the aforesaid provisions and position of law and reverting back to the case in hand, the moot ground urged by the petitioners in the instant review petition is that an error has crept in the judgment under review being apparent on the face of record as the Court has wrongly held the petitioners guilty of suppression of material fact owing to the non-disclosure of order dated 01-06-2005 passed by this Court in civil revision No. 40/2004 arising out of the order of the executing court qua the execution of decree dated 23-05-1991 and that the reason for non-execution of the said decree by the executing court and upheld by this Court was non-disclosure of total amount of **Nazro-Niaz** as well as the ratio of its sharing, and not for any other reason and, as such, same was not a material fact having a bearing upon the writ petition of the petitioners herein.

13. However, it is not in dispute that the petitioners herein admittedly concealed and suppressed the fact of filing of said civil revision No. 40/2004 before this Court and decision dated 01-06-2005 rendered therein whereby the order of executing court holding the decree dated 23-05-1991 earned by the petitioners herein as in-executable was upheld.

14. Said fact without miss ought to have been fully pleaded and duly brought into the notice of the writ court by the petitioners, more so, when the petitioners herein prominently cited and relied upon the decree dated 23-05-1991 which decree had come to be held in-executable by the executing court and thereafter by this Court as well in the revision petition supra.

15. Therefore, it does not and cannot lie in the mouth of the petitioners herein to argue now that the said aspect was not a material one and had no bearing in any manner whatsoever upon the writ petition filed by them. This Court in the judgment under review has categorically opined that the said fact is a material one to the effect that had it been brought into the notice of the writ court, same would have bearing affecting the decision of the writ Court.

16. Thus, under these facts and circumstances, the contention of the petitioners herein that this Court committed an error on the face of the record while passing the judgment under review is grossly misconceived and seriously misplaced. Having an overall view of the matter, it cannot but be said that the petitioners herein in essence are actually aiming for seeking re-hearing of the LPA under the illusion and guise of the instant review petition, which, however, is impermissible in law.

17. Viewed thus for what has been observed, considered and analyzed hereinabove, the judgment under review does not in any manner and to any effect call for review.

18. Resultantly, the petition fails and is, accordingly, **dismissed**.

(RAHUL BHARTI)
JUDGE

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

16.10.2025

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