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CGHC010376562024



2026:CGHC:39110-DB

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HIGH COURT OF CHHATTISGARH AT BILASPUR

REVP No. 257 of 2024

1. Abhishek Steel Industries Private Limited, 535 Urla Industrial Area, Urla Industrial Estate, Raipur, Chhattisgarh, Through Its Director, Mr. Rishikesh Dixit, S/o Mr. Ghanshyam Das Dixit, Aged About 46 Years, R/o Shivanand Nagar, Sector II, Behind Balaji Traders, Raipur, Chhattisgarh, Chhattisgarh

... Petitioner

versus

1. Employees State Insurance Corporation Through The Regional Director, Employees State Insurance Corporation, Raipur, Chhattisgarh, Chhattisgarh
2. Recovery Officer, Employees State Insurance Corporation, 18 South Avenue, Chowbey Colony, Raipur, District Raipur (CG)

... Respondents

For Petitioner : Mr. Saurabh Agrawal, Advocate (through virtual mode), with Mr. Aman Pandey, Advocate

For Respondents : Mr. Pranav Saxena, Advocate

DB: Hon'ble Mr. Justice Parth Prateem Sahu
& Hon'ble Mr. Justice Sachin Singh Rajput
Order on Board

Per Parth Prateem Sahu, J

03.09.2026

1. Petitioner has filed this petition under Rule 90 read with Rule 87 of the High Court of Chhattisgarh Rules, 2007 seeking of the order dated 09.04.2024 passed in MA No.87/2016.
2. Facts of the case, in nutshell, are that petitioner herein preferred an application under Section 75 read with 77 of the Employees State Insurance Act, 1948 (for short 'the Act of 1948') before the Employees Insurance Court – cum – Labour Court No.2, Raipur challenging the recovery orders dated 25.11.2005, 22.11.2005 and 22.11.2005 passed by the Employees Insurance Corporation (for short 'the Corporation') for recovery of Rs.3,91,081/-; Rs.4,94,679/- and Rs.1,54,58,216/- respectively payable towards employees contribution by M/s Rajesh Strips Limited for the period from 16.08.1995 to 31.07.2001. It was pleaded in the application that M/s Rajesh Strips Limited was declared sick under Section 3 (1) of the Sick Industrial Companies (Special Provisions) Act 1985 (for short 'SICA') and petitioner has taken its one unit on monthly rent of Rs.5,00,000/-. Petitioner sought for new code from the Corporation enabling them to deposit contribution under the Act of 1948, however, the Corporation instead of

allotting new code asked the petitioner to make their contribution under the old code which was allotted to said Rajesh Strips and accordingly, the petitioner was depositing the contribution. Suddenly, the Corporation without giving any relief to the petitioner has transferred entire liability of Rajesh Strips to it and hence, the demand raised was bad in law.

3. The Employee Insurance Court, by the order dated 23.7.2016 dismissed the application on the grounds mentioned therein, which was put to challenge by petitioner by filing a miscellaneous appeal before this Court, which came to be registered as MA No.87/2016. After considering the grounds mentioned in the appeal, the arguments advanced by both the parties as well as provisions of the Act of 1948, the Court has dismissed the appeal holding that the Corporation can very well fasten the liability to recover its dues.
4. Feeling dissatisfied with order dated 09/04/2024 passed by the Court, petitioner has approached Hon'ble Supreme Court by filing Special Leave to Appeal (C) No.43023/2024, which was dismissed as withdrawn with liberty to file review petition before the High Court. Given the liberty granted by Hon'ble Supreme Court, petitioner has filed present review petition.
5. Learned counsel for the petitioner submits that while deciding the appeal, the Court has not properly appreciated the scope and ambit of Section 45A of the Act of 1956, which clearly provides that no order under Section 45A of the Act shall be

passed by the Corporation in respect of the period beyond five years from the date on which the contribution shall become payable. In case at hand, demand raised by the Corporation pertains to the year 1995 to 1999 and demand is raised in the year 2005. Therefore, respondent/Corporation could not have called upon the appellants to pay contribution beyond the period prescribed under Section 45A of the Act of 1956.

6. He also submits that there are two pre-conditions which must be satisfied before Section 45A can be invoked. Firstly, no returns, particulars, registers or records in respect of a factory or establishment are submitted, furnished or maintained in accordance with the provisions of Section 44. Secondly, any Inspector or other official of the corporation is prevented by the employer in exercising his functions or discharging his duties under Section 45. In case at hand, erstwhile owner was depositing the contribution from 1995 onward and an inspection was carried out by the Corporation in the year 2001. Hence, respondent Corporation has wrongly invoked Section 45A of the Act of 1956 in stead of making assessment by taking recourse to Section 75 (2) (a) by making an application to the ESI Court.
7. He further submits that the Court has proceeded on wrong premise that notice was served upon the petitioner. In fact, petitioner has never been served with a notice to show-cause for determination under Section 45A of the Act of 1948 neither

he has been given opportunity of hearing before the orders impugned were passed. Notice in connection with demand of contribution of Rs.1,54,58,5216/- was issued to the Managing Director of Ramesh Strips Ltd. and not the petitioner. Thus, there is apparent error on the face of record.

8. He also contended that determination of quantum is contrary to Section 93A of the Act of 1956 and the same is not based on wages. The impugned demand is raised at the time when said Rajesh Strips Ltd. was a sick company, which is in contravention of Section 25 of the SICA which provides that no recoveries can be made against a sick company without prior permission of the BIFR.
9. Per contra, learned counsel appearing on behalf of respondent has supported the order under review and submitted that the scope of review is limited and an order/ judgment is open to review only if there is a mistake or an error apparent on the face of the record, which must be self-evident and does not require elaborate arguments. Grounds raised in instant review petition regarding invocation of Section 45A in place of Section 75 (2) (a) of the Act of 1956 for making assessment, non-fulfillment of pre-conditions of Section 45A; bar of limitation under Section 77 (1A) (b) of the Act of 1956 if recourse was taken to Section 75; determination of quantum is not based on wages; determination of quantum is contrary to Section 93A of the Act of 19856, impugned demand has been

raised at the time when Rajesh Strips Ltd. was a sick company and application of provision of Section 22 of the SICA; were not forming part of the application filed before the Employees Insurance Court or miscellaneous appeal before this Court. Thus, by raising new grounds on merits, petitioner is seeking rehearing of the case in the garb of review petition, which is not permissible.

10. Referring to other grounds raised in review petition and argued during course of hearing, he submits that the same are mere reproduction of the grounds of appeal, which were duly considered and decided by this Court while deciding appeal on merits. In substance, the review petition does not disclose any ground which can be said to be a valid ground for exercising review jurisdiction.
11. We have heard learned counsel for the parties and perused the record of writ petition as also order under review.
12. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 of the Code of Civil Procedure 1908 (for short 'CPC'), according to which, an order or 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 this jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'.

13. In **Parsion Devi and others vs. Sumitri Devi and others**, reported in **1997 (8) SCC 715**, Hon'ble Supreme Court while discussing the scope and ambit of review has held as under:-

"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". 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"."

14. In case of **State of West Bengal and others vs Kamal Sengupta and another** reported in **(2008) 8 SCC 612**, it was observed thus:-

"15. 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 self-evident 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 concerned Court/Tribunal cannot sit in appeal over its judgment/decision."

15. In case of **Asharfi Devi (dead) through Lrs Vs. State of Uttar Pradesh and Ors**, reported in **(2019) 5 SCC 86**, it was held thus:-

"18. It is a settled law that every error whether factual or legal cannot be made subject matter of review under Order 47 Rule 1 of the Code though it can be made subject matter of appeal arising out of such order. In other words, in order to attract the provisions of Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case."

16. In case of **Shanti Conductors Pvt. Ltd. vs. Assam State Electricity Board and others**, reported in **(2020) 2 SCC 677**, it was held thus:-

"25. The scope of review has been reiterated by this Court from time to time. It is sufficient to refer the judgment of this Court in Parsion Devi and Others Vs.

Sumitri Devi and Others, (1997) 8 SCC 715, wherein in paragraph 9 following has been laid down:

“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”.”

17. Keeping in mind the above settled principles of law relating to exercise of power of review of an order, the present review preferred by the petitioner is to be considered.
18. Upon perusal of the judgment under review, we find that the Court, while dismissing miscellaneous appeal of petitioner herein, heard the learned counsel for the parties and taken into consideration the material brought on record by respective parties. Grounds raised in review petition and argument advanced by learned counsel for petitioner referring to Section 45-A and Section 93A of the Act of 1956, were considered by the Court in Para No.8 onward of the judgment under review and it was concluded that the Corporation was justified in fastening liability upon the petitioner under Section 93A of the

Act of 1956 and directing recovery of contribution amount of ESI from the petitioner beyond five years from the date on which the amount of ESI became payable. Therefore, the aforementioned grounds would not come to the aid of the petitioner as it would amount to re-appreciation of evidence on record which would not be available to be done even in appeal much less in exercising review jurisdiction.

19. A review petition is not intended to be a re-hearing of the proceeding nor is the petitioner entitled to deem it to be a second opportunity for advancing stale and rejected arguments, which have been heard at length after due consideration by the Division Bench. A judgment / order may be wrong, erroneous, incorrect, legally untenable, etc. but nevertheless remains a valid judgment in the eyes of law against which the only course available for the aggrieved party is to go in appeal against the same. In the case of **Surendra Kumar Vakil & Ors. Vs. Chief Executive Officer, MP and Ors.**, reported in **(2004) 10 SCC 126**, Hon'ble Supreme Court has held thus:-

“10.....A point that has been heard and decided cannot form a ground for review even if assuming that the view taken in the judgment under review is erroneous.”

20. So far as other grounds urged in review petition, that is to say, grounds relating to alleged wrongful invocation of Section 45A

instead of Section 75 (2)(a); alleged non-service of notice; alleged non-satisfaction of pre-conditions under Section 45A; assessment allegedly not based on wages under Section 39; alleged infirmity under Section 93A on account of two units; alleged bar under Section 22 of the SICA, are concerned, during course of arguments, learned counsel for petitioner submits that he is pressing this review petition only on the ground relating to Section 45A and 93A of the Act of 1956. Even, it is not the case of petitioner that aforementioned grounds were raised in memo of appeal but the same were entirely overlooked and left completely unconsidered while arriving at its conclusion. Appeal was preferred proposing following substantial questions of law:-

“A. Whether a demand, recovery and order dated 13.12.2005 determining employees employers contribution on the basis of balance sheet and other assets and not on the record of wages paid / period is sustainable in law?

B. Whether the determination for a period 01.04.1998 to 31.03.1999 initiated vide notice dated 15.02.2005 is maintainable under Section 45A.

C. Whether the orders determining the liability is legal and sustainable against the appellant without there being any notice under Section C-18?”

21. In the case of **Collector of 24 Parganas and others vs Lalith Mohan Mullick and others**, reported in **1988 (Suppl) SCC 578**, Hon'ble Supreme Court, on the issue of new grounds being raised in review petition, held as under: -

"So far as this ground is concerned, it was not raised before this Court when the appeal was heard on merits. It does not appear to have been raised even before the High Court. The new ground cannot be taken into consideration for the purposes of the review application, apart from the fact that it would also involve investigation of new facts which were not on record till the point of time when the appeal was disposed of by this Court on 13-2-1986. We see no reason to entertain this review petition which accordingly fails and is dismissed."

22. In case of **Nehali Panjiyara & ors vs Shyama Devi & ors**, reported in **(2002) 10 SCC 578** Hon'ble Supreme Court has held that entirely new grounds, not raised earlier during regular hearing, cannot be raised for the first time in review. It was observed thus:

"2. The review petition raises entirely a new point about the extinction of the legal heirs in the line of descendants of the estate represented by Gurudayal Panjiara and Kunjlal Panjiara prior to the institution of the suit and that the said estate stood inherited in amongst the descendants of only Matuki Panjiara and Ashrafi Panjiara. Such a contention was never canvassed before any of the courts below. Not only that, there was no issue sought for on this point even

before the trial court. In second appeal the only dispute raised was regarding suit properties Items 2 to 8. The High Court confirmed the decision about their partibility in the light of the findings reached by the lower appellate court which has noted in para 49 of its judgment that defendant 2nd party admitted the plaintiff's claim for Items 2 to 8 of the schedule.

3. Consequently, no case is made out for our interference in the review proceedings on the aforesaid new contention."

23. Cumulative effect of above discussion is that the grounds pressed into service by learned counsel for petitioner during course of hearing of this review petition and pleaded in this review petition, are either new grounds, which are being raised for the first time, or repetition of the grounds that were already pleaded in memo of appeal, considered and decided by this Court while deciding appeal.

24. In light of above decisions of Hon'ble Supreme Court on the scope and ambit of review and in the given facts of the case, we do not find any good ground to exercise review jurisdiction under Order 47 Rule 1 of CPC. Accordingly, the review petition being sans merit is liable to be and is hereby dismissed. No order asto costs.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sachin Singh Rajput)
Judge

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