



IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 121 OF 2025

IN

WRIT PETITION NO. 479 OF 2022

ESTONIA FRANCISCO
DE ALMEIDA

... APPLICANT

Versus

TONY RODRIGUES & 5 ORS

... RESPONDENTS

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. Jeet Volvoikar, and Mr. Vledson Braganza, Advocates for the Applicant/original Respondent No.5.

Mr. Rohit Bras De Sa and Mr. Joel Pinto, Advocates for the Respondent/original Petitioner.

Mr. Deep Shirodkar, Additional Government Advocate for original Respondent Nos.1, 2 and 4.

Ms. Maria Correia, Additional Government Advocate for original Respondent No.3.

**CORAM: VALMIKI MENEZES &
NIVEDITA P. MEHTA, JJ.**

RESERVED ON: 17th DECEMBER, 2025

PRONOUNCED ON: 12th JUNE, 2026

ORDER (per Valmiki Menezes, J.)

1. The Applicant has filed the present Application for recall of order dated 06.03.2024, passed by this Court, in Writ Petition No.479 of 2022 by which the Applicant was directed to complete

the restoration works according to the schedule and time frame provided by the Applicant, which included construction of a wall in the middle of the swimming pool of the Applicant, as per the plan of the Respondent No.3 , (North Goa Planning and Development Authority-NGPDA); and further for a direction to refund of Rs.80,00,000/- deposited by the Applicant to defray costs of executing of this Court's orders .

2. The Application was opposed by the Original Petitioner who had filed Writ Petition No.479 of 2022 and who had complained of illegal hill cutting indulged in by the present Applicant who was the Respondent No.5 in the said petition. The Application has also been opposed by the State and by the North Goa Planning and Development Authority (NGPDA), on various grounds which will be presently dealt with.

FACTS RELEVANT TO DECISION OF THE APPLICATION:

3. On 17.08.2022, the Respondent No.1/ Original Petitioner, filed Writ Petition No. 479 of 2022, alleging hill cutting by the Respondent No.5 carried out in survey nos. 275/1, 276/5, 276/6 and 276/7; by order dated 13.02.2023, this Court disposed of the said Petition based on an undertaking given by the Applicant/Original Respondent No.5 to restore the hill in terms of the restoration plan dated 25.01.2023 provided by the

NGPDA, within 6 months and was further directed to place on record compliance report.

4. However, due to failure in complying with the order dated 13.02.2023 and on observing the careless conduct of the Respondent No.5 this Court vide order dated 31.07.2023 directed the Respondent no.5 to deposit Rs.25,00,000/- as security deposit which would be refunded to him on completion of the restoration works. Vide Order dated 08.08.2023, the Respondent No.5 undertook to deposit Rs.10,00,000/- and complete restoration work as undertaken earlier; another undertaking was given by Respondent no.5 on 21.08.2023.

5. Subsequently this Court vide order dated 31.10.2023, granted 2 months' extension to the Respondent No.5 to complete the work. However, it was observed that the work was not undertaken as per the agreed pace and there was further hill cutting. By order dated 06.02.2024, this Court directed Respondent No.5 to deposit a further amount of Rs.15,00,000/- and the balance amount of Rs.35,00,000/-, at the earliest.

6. Pursuant to order dated 06.02.2024, Respondent No.5 filed MCA(F) No.448 of 2024 for modification of order dated 13.02.2023 and 06.02.2024. along with MCA(F) No.449 of 2024 for delay in depositing amount of Rs.15,00,000/- and vide order dated 20.02.2024, delay was condoned; further this Court vide

order dated 26.02.2024 directed Respondent no.5 to deposit the balance amount. Vide order dated 06.03.2024, the balance amount deposited, was accepted by the Court and further undertaking was given by the Respondent No.5 to carry on restoration works within 60 days, further the Court directed the NGPDA to conduct inspection once a week and submit its report in case of any deviation from the plan.

7. Subsequently the Respondent No.5 vide communication dated 11.03.2024 informed the NGPDA that the wall in the middle of the swimming pool was not required as the existing wall has a structural certificate, however vide communication dated 22.03.2024, he agreed to construct the retaining wall.

8. The order dated 08.05.2024 records that the Respondent No.5 sought extension of 14 days' time for completion of restoration works in MCA No.1232/2024 (F) and further undertook to complete the same within the same time frame without delay and according to the plan marked "X" by 30.06.2024; the Respondent No.5 further undertook to deposit an amount of Rs.20,00,000/- within 7 days, (total deposit amounting to Rs.80,00,000/-) which would be forfeited in case of any deviation.

9. The Respondent No.5 vide communication dated 16.05.2024 and 26.06.2024 to the Respondent No.3 and 6,

expressed his inability to pay the said Rs.20,00,000/-; this Court vide its order dated 03.07.2024 directed forfeiture of the earlier deposited amount of Rs. 60,00,000/-in favour of the Respondent No.6- Public Works Department (P.W.D) and to carry out the pending restoration work and to file a report of estimated costs that would be incurred.

10. The Respondent No.5 thereupon filed the present application for recall of the order of this Court dated 06.03.2024 along with the report of Goa College of Engineering (GEC) dated 14.08.2024, which suggests non requirement of a wall before the swimming pool and instead suggests construction of swale drainage at the top of the slope and planting vetiver grass, since this would not disturb the slope. Subsequently the Report dated 15.01.2025, of the Respondent No.6, P.W.D states that in compliance with the report of the GEC, the Respondent No.5 has already constructed swale drain at the top of the slope and stone pitching has been done due to which vetiver grass need not be planted.

SUBMISSIONS

11. The following submissions have been advanced by learned Senior Advocate J. Coelho Pereira for the Applicant/ Original Respondent No.5 in Writ Petition No.479 of 2022 in support of the relief sought in the application.

a) It was submitted that this Court's order of 06.03.2024 does not operate as Res-Judicata, as the order does not decide the lis between the parties, but only directs the Applicant, on the suggestion of the of the Applicant, and based upon the report of the NGPDA, to restore the hill in question to its original condition. It was further contended that the undertaking given by the Applicant to restore the hill alleged to have been cut by him, was based upon the Court's belief that the restoration ordered, was technically correct; the restoration was ordered on the basis of a report submitted by the NGPDA with a plan and a suggestion as to the manner in which the hill should be restored. The learned Senior counsel emphasised that this is not an application for review of the Courts order but was only filed for recall of the order, since the order dated 06.03.2024 sought to be recalled is not a final order, as the petition was disposed of on 13.02.2023, only on a statement, "the same is not open to review but is open for this Court to recall its order". Reliance is placed on the following judgment in support of these arguments: ***Satyadhyan Ghosal and Others v/s Deorajin Debi an Another***¹, ***Avishek Goenka v/s Union Of India and***

¹ 1960 SCC OnLine SC 15

Another² and Confederation of Real Estate developers Of India V/s Vanashakti and Another³.

b) It was then contended that since the hill is now restored at the cost of the Applicant, there was no further cause for the Court to hold the amount of Rs.80,00,000/- deposited by the Applicant before this Court to secure the completion of restoration works. It was further contended that the NGPDA is not a technical body and does not have the expertise to certify the restoration work for the hill cutting involved in Applicant's case, and in fact, the Applicant had restored the hill pursuant to directions of this Court with the services of an Engineer, Shri Paresh Gaitonde, on the basis of his technical recommendation, the restoration was completed. It was then submitted that the said Engineer had certified the stability of the work of restoration carried out by the Applicant from his own funds in the amount of Rs.59,48,964/- thus complying with this Court's direction.

(c) It was further contended that it was misunderstood by the Court that the applicant had not complied with the directions since the fifth wall, which was directed to be constructed by the NGPDA through the swimming pool of

² 2012(5) SCC 275

³ 2025 SCC OnLine SC 2474

the applicant, did not have any technical basis as can be seen from the report of the GEC and of the P.W.D (Respondent No.6) who, on its technical appraisal had concluded that the fifth wall was not required to be constructed. Reliance was placed on *Shilpi Constructions Contractors v/s Union of India*⁴. It was then contended that since the inspection report of Respondent No.3 NGPDA, which was then considered by the P.W.D i.e. Respondent No.6, which had opined that the fifth wall in the swimming pool is no more required as the hill is stable, would entitle the Applicant to a refund of Rs.80,00,000/- and to a recall of the order dated 06.03.2024 of this Court, as no purpose will be served by unnecessarily constructing wall no.5, which had no use.

12. Learned Additional Government advocate Mr. Deep Shirodkar advanced the following submissions on behalf of Respondent Nos. 1, 2 and 4:

a. That the Application is essentially one for review of this Court's order dated 13.02.2023, though couched in a language that suggests that the Applicant is seeking recall of the said order. It was submitted that in whatever language such applications be couched, they are ultimately to be considered as an application for review of an order.

⁴ 2020 (16) SCC 489

Reliance was placed on the Judgment of the Supreme Court in *Supertech Limited v/s Emerald Court Owner Resident Welfare Association and Others* ⁵.

b. It was submitted that since the application is in effect a Review application, it is hopelessly barred by limitation and there is no explanation found in the application by which delay in filing the same can be condoned. It was submitted that the application for recall of order dated 06.03.2024 has been filed, more than a year after the order sought to be reviewed, and is therefore barred by limitation.

It was further submitted that the Applicant has sought recall of order dated 06.03.2024, but has not challenged the original order of this Court dated 13.02.2023, by which Writ Petition No. 479/2022 was disposed of, nor has it asked for recall or review of order by which the Applicant was directed that he should not occupy the house till the restoration work is complete. It was argued that in the absence of seeking review of the orders which formed the basis of order dated 06.03.2024, now sought to be recalled, the present application ought not to be entertained.

⁵ (2023) 10 SCC, 817

c. It was then submitted that by permitting recall of the order dated 06.03.2024, the Applicant cannot be allowed to dilute the undertakings given by him to complete the works of restoration in terms of the plan suggested by the Planning Authority, since this would amount to abuse of the process of the Court and would be contemptuous of the directions issued by the Court on the basis of the undertakings. It was also submitted that without prejudice to these submissions, what was directed by this Court was to undertake Restoration of the Hill which was illegally cut and not an exercise of giving near stability to the hill structure, which was illegally cut. The learned Additional Government Advocate submitted that the Applicant is now attempting to pass off the certification of the Engineer or GEC or P.W.D, that the hill which was cut has now attained stability, as a completion of Restoration of the hill, when in fact, Restoration is completely different concept from landing near stability to the Hill structure.

13. Ms. Simone Correia, learned Additional Government Advocate appearing for the Planning Authority, apart from adopting arguments advanced by the State of Goa has made the following submissions:

a. Learned Counsel has taken us through the contour plan submitted by the NGPDA which shows that the Hill in

question, which was illegally cut by the Applicants had a slope of 30% within the last 10 metres at the base of the hill, and presently the swimming pool constructed by the Applicant is within the area where the hill slope ends and has been cut illegally. She submitted that the work of restoration of the hill comprises restoring the hill slope to its original condition at its base, which extends into the area, where now the Applicant has constructed a swimming pool.

b. The learned Counsel has taken us through the report of the GEC, which has opined that the hill slope has now attained stability and the last wall i.e. the retaining wall no.4 need not be constructed to stabilise the hill; with reference to the report, it was submitted that the GEC report does not refer to the contour plan of the hill which depicts the hill slope to the end, inside the swimming pool constructed by the Applicant. She further submitted that the report does not state that there is no need for construction of the fifth wall at the base of the hill, for the purpose of restoration of the hill.

14. The following submissions have been advanced by learned Advocate Mr. Rohit Bras D'sa for the Original Petitioner in Writ Petition No.479 of 2022:

a. That the application being a review application is beyond the period of limitation. That even otherwise the application does not seek recall of the order directing restoration of the hill in terms of the plan of the NGPDA, the learned Counsel adopts all other submissions made on behalf of the State and the NGPDA.

b. Reliance was placed on the following Judgements:

- i. ***Smriti Madan Kansagra v/s Perry Kansagra***⁶
- ii. ***Dr. Dhruvaram Murlidhar Sonar v/s State of Maharashtra and Others***⁷
- iii. ***Shri Ram Sahu v/s Vinod Kumar Rawat and Others***⁸
- iv. ***West Bengal Central School Service Commission and Others v/s Abdul Halim and Others***⁹
- v. ***Vikesh Kumar Gupta and Another v/s State of Rajasthan and Others***¹⁰

15. The question that falls for our determination in this application is whether the application partakes of an application for review, and if not, whether the circumstances stated in the application, justify recall of this Court's order dated 06.03.2024.

⁶ 2023 (20) SCC 517

⁷ 2019 (18) SCC 191

⁸ (2021) 13 SCC 1

⁹ (2019) 18 SCC 39

¹⁰ (2021) 2 SCC 309

16. The Petition originally filed in the year 2022 was for a writ of mandamus to direct the State and the Planning Authority to revoke the order dated 11.02.2022 passed by the Planning Authority in favour of the present Applicant by which the Planning Authority disposed of a complaint filed by the Petitioner stating that the cutting of the hill in question was due to a landslide, and the same should be decided by the Collector under the Disaster Management Act. The Petitioner has also sought the relief of quashing of the order dated 11.04.2022 issued by the Planning Authority merely penalising the present Applicant, and for a direction to initiate criminal action under Section 17B of the Town Planning Act to take criminal proceedings against the Applicant. After issuing notice to the present Applicant who was Respondent No.5 in the Writ Petition, this Court had ordered a site inspection to be conducted which revealed that an entire hill in the survey No. 276/5, 276/6 and 275/1 of village Taleigao to the extent of almost 1200 sq. mtrs had been cut. On 09.01.2023, the Applicant made a statement to this Court that he would take measures required for **restoring the site where the hill cutting had taken place**. Accordingly, this Court directed the Respondent No.3, Planning Authority to call a site inspection and to prepare a restoration plan which was to indicate the minimum time during which the Applicant could undertake restoration work.

17. After the site inspection was complete, the NGPDA submitted a restoration plan along with its affidavit dated 25.01.2023 with a report, to this Court. The Restoration Plan for restoring the Hill under the aforementioned two survey nos., opined that the Applicant would be required to construct five vertical plain cement concrete retaining walls at specified locations, Wall No. 1 being located at the top of the Hill, whilst Wall No. 2 to be located at the base of the hill at the location, which was inside the swimming pool constructed by the Applicant at the rear side of his house. All specifications of the material to be used and the depth/height of these retaining walls were depicted on this plan. After the Restoration Plan was placed before this Court, and on the Court's proposal that the Hill would have to be restored, in the manner proposed in the said plan, the Applicant filed an affidavit dated 04.02.2023, in which he has specifically stated that he is willing to carry out the restoration work as proposed by the Court at his own cost and expense. He also undertook to commence the restoration work at site immediately, by employing contractors to execute the work as proposed by the Planning and Development Authority.

18. A further perusal of the above affidavit reveals that in para 4 thereof, the Applicant sought a limited clarification from the Authorities with respect to the proposed wall within the swimming pool, claiming that there already existed a concrete

retaining wall, sufficient to bear the load of the Earth to be filled as a part of the restoration work, and therefore contended that there was no meaning of having a fifth wall in the swimming pool. The Applicant also contended that he had applied on 30.01.2023, before the Planning Authority for modification of the requirement of the fifth wall in the swimming pool, and has then stated para 6 of the affidavit that in case the Planning Authority does not approve or revise the Restoration Plan as requested, that he would carry out the construction of the retaining wall as proposed in terms of the Restoration Plan. In other words, the undertaking given to this Court was that the fifth retaining wall, within the swimming pool, would be constructed in terms of the Restoration Plan, if the Planning Authority did not modify its proposed restoration.

19. The Applicant then filed an additional affidavit cum undertaking before this Court on 04.02.2023, stating that he had sought a limited clarification from the NGPDA with respect to the proposed wall within the existing swimming pool (the fifth wall), which according to the Applicant was not required since he had constructed a concrete retaining wall sufficient to bear the load of the earth, outside the swimming pool. The application, annexed to the affidavit was dated 30.01.2023. In this affidavit the Applicant has specifically stated in para 6 that in case, the Authority does not approve or revise the proposed plan as

requested in his application of 30.01.2023, he undertook to carry out the construction of the retaining wall (the fifth wall in the swimming pool) as proposed by the NGPDA.

20. On 10.02.2023, the NGPDA, passed an order under Section 51 (1) (a) to (c) of the Town Planning Act, imposing a penalty of Rs.1,00,000/- on the Applicant for carrying out illegal hill cutting of the land; the order also refers to the report of the NGPDA dated 25.01.2023, which records that the existing plum concrete retaining wall at a distance of 1.5 mtrs. from the swimming pool (4th wall) would not be able to take load of the filled portion of earth filling of restoration of the hill; the order further referred to the report stating that in order to strengthen the constructed plum concrete retaining wall, an additional retaining wall was proposed to be conducted at the middle the existing swimming pool, so as to hold and sustain the overall surcharge load of the restoration of the hill and of filling and pitching. The order consequently, in exercise of power under Section 52(a) of the Town Planning Act, directed the Applicant to restore the land as per the restoration plan submitted in the Court in Writ Petition No. 479/2022. The order further directed the Applicant to submit a monthly progress report to the Authority and the site inspection to be conducted and further directed completion of the restoration work in six months.

21. The order of the NGPDA dated 10.02.2023 passed under Section 52 of the Act, therefore clearly directs the construction of the fifth retaining wall as part of the restoration of hill within the swimming pool apart from imposing the penalty of Rs.1,00,000/- on the Applicant.

The aforesaid order of 10.02.2023 was assailed by the Applicant before the Town and Country Board under Section 52(2)(b) of the Town Planning Act, which decided to reject the Appeal insofar as it challenged the direction to restore the hill; the Board however set aside the direction to impose penalty on the Applicant and remanded the matter back to the NGPDA with directions to decide the payment of penalty afresh, in view of the provisions of Section 51(1)(a) to (c) of the Act. The order dated 10.02.2023 therefore attained finality insofar as the direction for restoration of the land was concerned and was not challenged any further by the Applicant.

22. The Writ Petition was disposed of on 13.02.2023; however, the disposed petition came for compliance of the undertaking given by the Applicant to carry out the restoration of the hill by constructing the 5 proposed walls in accordance with the plan dated 25.01.2023 submitted by the NGPDA, since the Applicant had not completed the construction of the fifth wall as undertaken in the swimming pool. By an order of 31.07.2023, this Court took note of the undertaking that the Applicant would

complete the work by 12.08.2023 and noted that the Applicant has not even started any work at site. Accordingly, the Court directed the Applicant to deposit an amount of Rs.25,00,000/- to secure the works to be undertaken by the Applicant and directed the NGPDA to inspect the site and submit a report by 08.08.2023. The Applicant filed an affidavit claiming he has no means to comply with the deposits directed by the Court. A site inspection report dated 25.08.2023, submitted to this Court by the NGPDA made the following observations:

- (a) That the 1st retaining wall from the top of the wall (South to North) was being constructed.
- (b) That the 3rd RCC retaining wall completed to an extent of 3/4th length of the wall proposed by the NGPDA.
- (c) That the work of the construction of the 2nd, 4th and 5th retaining wall from the top of the hill had not yet commenced.

A similar report was filed on 07.09.2023, 27.09.2023 and 12.10.2023.

On 31.10.2023, this Court recorded an undertaking from the Applicant that the work would be completed in all respects within maximum of two months from that date. Even after giving

this undertaking, the works were not complete as on 30.01.2024, when this Court further recorded that the works were not proceeding at site as undertaken. In that view of the matter, by the order of 06.02.2024, this Court directed the Applicant to deposit the total amount of Rs. 60,00,000/- before this Court and to report compliance of the undertaking.

23. A further report of 16.02.2024 of the NGPDA disclose that no works were carried out at site in terms of the undertaking, pursuant to which this Court, by its order of 08.05.2024 directed that in the event the Applicant failed to complete the works by 30.06.2024, he will forfeit the amount of Rs.80,00,000/- deposited before the Court, which would then stand transferred to the NGPDA and the PWD, who would proceed to complete the balance works, utilising this amount. None of the aforesaid orders were challenged by the Applicant.

24. Since the works were not carried out by the Applicant in terms of order dated 08.05.2024, this Court transferred the said amount to the PWD, directing it to carry out the restoration works at site in terms of the restoration plan.

25. Taking note of all the aforesaid facts, and the consistent conduct of the Applicant in breaching his undertaking to the Court, itself would disentitle the Applicant to orders sought in the present application for modification of original order. Apart

from the order directing restoration passed by the NGPDA on 10.02.2023, having not been challenged further and having been accepted by the Applicant, even after the Applicant's attempt to seek a modification of the directions of the NGPDA vide application of 30.01.2023; the order of 10.02.2023 directing restoration, including construction of the fifth wall in the swimming pool, effectively rejected the application of the Applicant of 30.01.2023 to modify the NGPDA's own order. The present application, in these set of facts, and after indulging in consistent breach of the Applicant's undertakings to this Court will not entitle the Applicant to any relief. Considering the conduct of the Applicant as referred in the preceding paragraphs, we reject the application and hold that the Applicant's conduct would disentitle him from any relief sought in the application.

26. It is the objection of the Respondents in the application that though the application is styled as recall of order dated 06.03.2024 of this Court, the application is still partake of being a Review Application, for which the Applicant would be required to comply with the provisions of the Appellate Side Rules of this Court. According to the Respondents, no grounds of review, either of showing an error apparent on the face of the order dated 06.03.2024, nor any new material which constitutes a ground and sufficient cause for this Court to review its order has been set out in the application. It was also argued that the application, being

one effectively for review, is barred by limitation, since it has been filed on 30.04.2025 more than a year after the order dated 06.03.2024 has been passed.

27. Countering these submissions, it was submitted on the behalf of the Applicant that the order sought to be recalled is not a Judgment or a decision which has attained finality, but is an order which only records a statement of the Applicant that he will comply with and implement the restoration plan placed before the Court. It was further submitted that the orders to be recalled records the Applicant's undertaking and directs the completion of the works at site in a time frame based upon a plan prepared by the Planning Authority, which is neither based on proper engineering evaluation nor it is submitted or prepared by any qualified Officer of the Planning Authority. According to the Applicant, the Assistant Engineer of the Public Works Department by a report dated 15.01.2025 has opined, that on scrutinizing the works carried out by the Applicant at site, the fifth retaining wall, which presently does not exist is not required for the slope stability and the fourth retaining wall constructed by the Applicant appear to serve the purpose of slope stability. The Applicant contend that the opinion of the Executive Engineer clearly states that the additional wall (fifth wall), in front of the existing retaining wall, in the swimming pool is not required. According to the Applicant, this is a cause for recall of

the order dated 06.03.2024 and discharge of the Applicant from performing his undertaking, since such undertaking was based upon a plan which had no technical backing.

28. At the outset, we must take note of the specific facts which has led to the passing of our order on 06.03.2024. Whilst the Writ Petition was pending, the Planning Authority inspected the site and placed before us on 25.01.2023, a Restoration Plan suggesting construction of the five walls, including the fifth wall, at the base of the hill, within the swimming pool constructed by the Applicant. On such plan being filed, the Applicant, on affidavit, gave this Court a solemn undertaking on 04.02.2023 and a second undertaking on 07.02.2023 that he would construct the five retaining walls and carry out the restoration work in accordance with the report submitted by the NGPDA and the plan dated 25.01.2023 within six months.

29. Further, whilst this petition was still pending, the Planning Authority passed an order on 10.02.2023 in terms of Section 52 of the TCP Act, directing the Applicant to restore the hill cut by him exactly in terms of the report and the plan submitted to this Court on 25.01.2023. Thus, when the order dated 10.02.2023, was communicated and known to the Applicant, who had, two days prior, to the order, given this Court a solemn undertaking to complete the restoration work, the Applicant at that point of time had the option of requesting this Court to modify its order or

leave it open to the Applicant to make the undertaking to the Court subject to laying a challenge to order dated 10.02.2023 (directing restoration) before the Board. No such steps were taken, and the petition was allowed to be disposed of on 13.02.2023, accepting the undertakings.

30. After the petition was disposed of, and without further disclosing to this Court, the Applicant did file and Appeal to the Board impugning the NGPDA's order of 10.02.2023, where by order dated 12.07.2023 refused to interfere with the order of the NGPDA dated 10.02.2023 insofar it directed restoration of the hill, but remanded the matter back to the NGPDA, limited to a fresh decision on the question of quantum of penalty. This order of the Board was not challenged further and instead, when the disposed petition came up for enforcement of the undertaking given by the Applicant, the Applicant, on several occasion sought extension of time to comply with the undertaking and has even deposited total amount of Rs. 80,00,000/- to secure the work of restoration undertaken by him. It is in this context that one would have to view the application now filed by the Applicant and conclude whether the same has been styled as one for "Recall of the Order" or whether the only option open to the Applicant was to seek a review on merits.

31. On a reading of the order of this Court dated 13.02.2023, there is no doubt that the petition was disposed of on the basis of

the undertakings given by the Applicant, and after making specific reference in para 6 of the order to the order and direction of the NGPDA directing restoration of the land in accordance with the restoration plan. That order was therefore passed directing implementation of the undertaking given and on being aware that there was a specific order under Section 52 passed against the Applicant. That order is therefore passed on merits, though not sought to be recalled or reviewed by the Applicant. The Applicant has only chosen to seek a review of our subsequent order dated 06.03.2024, which was passed a year later. The order sought to be recalled, has noted in para 4 thereof that the Applicant had in fact filed an application for modification of the order of this Court dated 13.02.2023 and after taking advantage of the fact that the Applicant had deviated from the NGPDA's restoration plan and put up retaining walls which were not even part or located in accordance with the Restoration Plan. The order sought to be recalled, clearly rejects the proposal of the Applicant laid before this Court which modifies the earlier order of 13.02.2023.

32. At this juncture, we make reference to the observations of the Hon'ble Supreme Court in ***Supertech Limited*** (supra) which dealt with the miscellaneous application seeking modification of the Judgment of the Supreme Court, on the premise that the Applicant did not seek as review of the Judgment, but only

modification. Whilst considering this submission, the Supreme Court has in para 8 and 9 of the Judgment considered the effect of the Judgment sought to be modified and has held that once directions are issued in an order, no modification can be sought by way of an application, but essentially, the party would have to seek a review of such order which was passed on merits. The aforementioned paragraphs are reproduced below:

“8. The judgment of this Court dated 31-8-2021¹ has affirmed the direction which was issued by the Division Bench of the Allahabad High Court for the demolition of Tower 16 and Tower 17. This is evident from the ultimate conclusions and directions contained in paras 172. 1 to 172. 5 of the judgment. In essence, what the applicant seeks in the present application is that the direction for the demolition of Tower 16 and Tower 17 should be substituted by the retention of Tower 16 in its entirety and slicing of a portion of Tower 17. Clearly, the grant of such a relief is in the nature of a review of the judgment of this Court

9. In successive decisions, this Court has held that the filing of applications styled as miscellaneous applications" or "applications for clarification/modification in the guise of a review cannot be countenanced. In Gurdip Singh Uban, M. Jagannadha Rao. J speaking for a two-Judge Bench of this Court observed (SCC p. 309, paras 17-18)

"17 We next come to applications described as applications for "clarification", "modification" or "recall" of judgments or orders finally passed. We may point out that under the relevant Rule XL of the Supreme Court Rules, 1966 a review application has first to go before the learned Judges in circulation and it will be for the Court to consider whether the application is to be rejected without giving an oral hearing or whether notice is to be issued

Order XL Rule 3 states as follows

3. Unless otherwise ordered by the Court, an application for review shall be disposed of by circulation without any oral arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite party

*In case notice is issued, the review petition will be listed for hearing, after notice is served. This procedure is meant to save the time of the Court and to preclude frivolous review petitions being filed and heard in open court. However, with a view to avoid this procedure of "no hearing", we find that sometimes applications are filed for "clarification", "modification" or "recall", etc not because any such clarification, modification is indeed necessary but because the applicant in reality wants a review and also wants a hearing, thus avoiding listing of the same in chambers by way of circulation. Such applications, if they are in substance review applications, deserve to be rejected straightaway inasmuch as the attempt is obviously to bypass Order XL Rule 3 relating to circulation of the application in chambers for consideration without oral hearing. By describing an application as one for "clarification" or "modification", really one of review a party cannot be permitted to circumvent or bypass though it is the circulation procedure and indirectly obtain a hearing in the open court. What cannot be done directly cannot be permitted to be done indirectly. (See in this connection a detailed order of the then Registrar of this Court in *Sone Lal v. State of U.P.* deprecating a similar practice.)*

18. We, therefore, agree with the learned Solicitor General that the Court should not permit hearing of such an application for "clarification", "modification" or "recall" if the application is in substance one for review. In that event, the Court could either reject the application straightaway with or without costs or permit withdrawal with leave to file a review application to be listed initially in chambers."

The Judgment further considered that the judicial pronouncement brings finality to the matter and cannot be modified by filing applications to avoid

compliance with the judicial decision. It has held thus:

13 .The hallmark of a judicial pronouncement is its stability and finality Judicial verdicts are not like sand dunes which are subject to the vagaries of wind and weather13 A disturbing trend has emerged in this Court of repeated applications, styled as miscellaneous applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit Miscellaneous applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly ("Quando aliquid prolubetur ex directo, prohibetur et per obliquum")."

33. Thus, whatever may be the nomenclature used for the application, the moment it seeks modification or recall of specific direction or mandate contained in the order sought to be varied, the same would partake of an application for review. In the present case, for reasons set out above, the order dated 06.03.2024, clearly accepts the Applicant's undertaking and direct the Applicant to comply with the undertaking and complete restoration works at site in accordance with the order of the Planning Authority and the Restoration Plan placed on record. The direction also sets out timeline. The order had attained finality and in fact, the timeline sought to be extended by the Applicant himself, after securing the cost of restoration

with a deposit in the total amount of Rs.80,00,000/-. In this scenario therefore, the present application clearly seeks a review of our order dated 06.03.2024, which is time barred and, in any event, does not disclose either an error apparent on the face of the record or a reason based on fresh material, which would justify such review. Therefore, on this basis also, we reject the application.

33. For all the aforementioned reasons, the application stands dismissed with costs of Rs. 10,000/-. Needless to state, for reasons above, prayer clause (b) for refund is rejected.

NIVEDITA P. MEHTA, J.

VALMIKI MENEZES, J.