

IN THE HIGH COURT OF JUDICATURE AT PATNA

**CIVIL REVIEW NO.153 OF 2015
IN
CIVIL WRIT JURISDICTION CASE NO. 19862 OF 2010**

WITH

**CIVIL REVIEW NO. 154 OF 2015
IN
CIVIL WRIT JURISDICTION CASE NO. 21447 OF 2011**

WITH

**CIVIL REVIEW NO. 155 OF 2015
IN
CIVIL WRIT JURISDICTION CASE NO. 10185 OF 2010**

WITH

**CIVIL REVIEW NO. 156 OF 2015
IN
CIVIL WRIT JURISDICTION CASE NO. 10525 OF 2012**

WITH

**CIVIL REVIEW NO. 157 OF 2015
IN
CIVIL WRIT JURISDICTION CASE NO. 5831 OF 2012**

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THE HIGH COURT OF JUDICATURE AT PATNA THROUGH THE
REGISTRAR GENERAL

.... **PETITIONER** (IN CIVIL REVIEW NO. 153 OF 2015)

VERSUS

SRI K. K. CHAUBEY, SON OF SHRI PADMA NARAIN CHAUBEY,
RESIDENT OF HOUSE NO. 272, PATLIPUTRA COLONY, PATNA

.... **RESPONDENT** (IN CIVIL REVIEW NO. 153 OF 2015)

WITH

1. THE HONBLE PATNA HIGH COURT OF JUDICATURE AT PATNA
THROUGH THE REGISTRAR GENERAL PATNA HIGH COURT
2. THE REGISTRAR GENERAL, HON'BLE PATNA HIGH COURT OF
JUDICATURE AT PATNA

.... **PETITIONERS** (IN CIVIL REVIEW NO. 154 OF 2015)

VERSUS

1. YOGENDRA PRASAD AZAD, SON OF LATE RAMAVATAR



SWARNKAR @ RAMAVATAR PRASAD KHATRI, CHAMBER NO. 65, BIHAR STATE BAR COUNCIL BHAWAN, PATNA HIGH COURT, PATNA -800001, RESIDENT OF MOGALPURA PURANI CHOWKI, PATNA CITY, PATNA-800008, POLICE STATION KHAJEKALAN, DISTRICT PATNA

2. GIRIJA NANDAN PRASAD AZAD, SON OF LATE RAM AUTAR PRASAD SWARNKAR @ RAM AUTAR PRASAD KHATRI, RESIDENT OF RAM AUTAR PRASAD KHATRI PATH, GURHATTA, PATNA CITY-800008, POLICE STATION KHAJEKALAN, DISTRICT PATNA

.... **RESPONDENTS** (IN CIVIL REVIEW NO. 154 OF 2015)

WITH

1. THE HONBLE PATNA HIGH COURT OF JUDICATURE AT PATNA THROUGH THE REGISTRAR GENERAL PATNA HIGH COURT
2. THE REGISTRAR GENERAL, HON'BLE PATNA HIGH COURT OF JUDICATURE AT PATNA

.... **PETITIONERS** (IN CIVIL REVIEW NO. 155 OF 2015)

VERSUS

CHAKRAPANI, SON OF S. S. SHARMA, CHAMBER NO. 137, BIHAR BAR COUNCIL BHAWAN, PATNA HIGH COURT, PATNA, RESIDENT OF SAKET, EAST B.S.I.D.C. COLONY, POLICE STATION S. K. PURI, DISTRICT PATNA

.... **RESPONDENT** (IN CIVIL REVIEW NO. 155 OF 2015)

WITH

THE HIGH COURT OF JUDICATURE AT PATNA (THROUGH THE REGISTRAR GENERAL), BIHAR, PATNA

.... **PETITIONER** (IN CIVIL REVIEW NO. 156 OF 2015)

VERSUS

RAKESH KUMAR, SON OF SHRI JAGESHWAR PRASAD YADAV, RESIDENT OF VILLAGE KASABA, POST OFFICE SIMARIYA GHAT, DISTRICT BEGUSARAI, STATE BIHAR, PIN CODE 851126

.... **RESPONDENT** (IN CIVIL REVIEW NO. 156 OF 2015)

WITH

1. THE HONBLE PATNA HIGH COURT OF JUDICATURE AT PATNA THROUGH THE REGISTRAR GENERAL PATNA HIGH COURT
2. THE REGISTRAR GENERAL, HON'BLE PATNA HIGH COURT OF JUDICATURE AT PATNA

.... **PETITIONERS** (IN CIVIL REVIEW NO. 157 OF 2015)

VERSUS

ANJU MISHRA, DAUGHTER OF S. N. MISHRA, ADVOCATE, MEMBER OF ADVOCATES ASSOCIATION, PATNA HIGH COURT, RESIDENT OF

MAHABIR COLONY, ANISHABAD, BEUR, PATNA-2

.... **RESPONDENT (IN CIVIL REVIEW NO. 157 OF 2015)**

Appearance :

(In C. REV. No. 153 of 2015)

For the Petitioner/s : Mr. Bindhyachal Singh

For the Respondent/s : Mr. K. K. Choubey (in person)

(In C. REV. No. 154 of 2015)

For the Petitioner/s : Mr. Bindhyachal Singh

For the Respondent/s : Mr. Dr. Kumar Amitesh Chandra, Advocate
Mr. Yogendra Prasad Azad (in person)

(In C. REV. No. 155 of 2015)

For the Petitioner/s : Mr. Bindhyachal Singh

For the Respondent/s : Mr. Chakrapani (in person)

(In C. REV. No. 156 of 2015)

For the Petitioner/s : Mr. Bindhyachal Singh

For the Respondent/s : Mr. Rakesh Kumar (in person)

(In C. REV. No. 157 of 2015)

For the Petitioner/s : Mr. Bindhyachal Singh

For the Respondent/s : Ms. Anju Mishra (in person)

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE SHIVAJI PANDEY

AND

HONOURABLE MR. JUSTICE SUDHIR SINGH

CAV JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 30-09-2015

To err is human. Being human beings, Judges may also commit error. Having recognized this basic human weakness, law provides for review. No wonder, therefore, that Justice Robert Jackson remarked, in **Brown v. Allan (1953) 344 US 443 at 540**, "*We are not final, because we are infallible; we are infallible only because we are final*".

2. When a relevant statutory provision or a relevant Constitutional provision escapes the attention of a Judge, while deciding an issue or a *lis*, or when a Judge, while relying



on a binding precedent, fails to notice some relevant observations made in the same very judicial precedent, which the Judge is relying upon, or when a Judge, while interfering with a statutory provision, fails to notice some other relevant or inseverable provisions, causing thereby confusion or miscarriage of justice, *is a review legally permissible?* The present set of review petitions seeks answer to these crucial questions.

3. Consequently, it is not uncommon for a Court to be invited to decide if its order, decision or judgment suffers from any such error, which calls for review of the order, decision or judgment, as the case may be. If, therefore, any review petition is made, the Court shall consider the review petition gracefully and with open mind so that no miscarriage of justice is caused.

4. Appropriate, therefore, it is, in our considered view, that the broad parameters and power of review are clearly spelled out by us before any order on the present set of review petitions is made.

5. How the question of review in the present set of review petitions has come to be raised takes us to the background facts leading to the making of these review petitions. The material facts and various stages, which have led to the present set of review petitions, are, therefore, set

out, in brief, as follows:-

6. In exercise of powers conferred on the High Court by Section 34 of the Advocates Act, 1961 (for short, 'the Act'), "*Registration of Advocates as Advocates-on-Record of the Patna High Court Rules*" were framed under heading "D" of Chapter-XXIV of the Patna High Court Rules, 1916. The Registration of Advocates as *Advocates-on-Record* of the Patna High Court Rules (hereinafter referred to as "the Rules"), came into force with effect from 10.12.2009.

7. Under Rule 3A of the Rules, '*Advocate-on-Record*' means those advocates, who intend to act '*in addition to plead*' and, by virtue of Rule 5 of the Rules, an advocate has been disentitled to register himself in the register of *Advocates-on-Record* unless he (i) *has an office in the city of Patna*, (ii) *has a registered clerk working with him exclusively or with other advocates collectively; and* (iii) *has been recommended, in writing, by, at least, one Senior Advocate*. Rule 4 puts an embargo on the right of a litigant *to engage an advocate to act in connection with any litigation*, whether pending or to be instituted, in the High Court, *as his or her Advocate-on-Record*, unless the advocate is registered as an *Advocate-on-Record* (for short, A.O.R.).

8. With the help of writ petitions made, as many as five in number, under Article 226 of the Constitution of India,



the Rules were put to challenge by some petitioners, who are registered as advocates by the Bihar State Bar Council, the principal contention of the writ petitioners being that the Rules are in violation of Articles 14 and 19(1)(g) of the Constitution of India, Section 30 of the Act and *ultra vires* the powers conferred upon the High Court under Section 34 of the Act. These writ petitions gave rise to C.W.J.C. Nos. 5831/2012, 10525/2012, 21447/2011, 10185/2010 and 19862/2010.

9. By a common judgment and order, dated 17.07.2015, the writ petitions have been partly allowed in the following terms:-

"(a) The High Court does have the power to frame Rules under Section 34 of the Act, but in such a manner that the right to practise is not taken away.

(b) The Rules that can be framed under Section 34 of the Act are to be in relation to the manner in which the pleadings must be drafted, the advocates must be dressed, the manner in which they shall conduct themselves in the Court and the manner in which an advocate can practise in the High Court.

(c) The right of an advocate to practise based on his enrolment with the Bar Council and Section 30 of the Act cannot be taken away in the name of Regulation.

(d) Rules 4, 5, 6, 7(vi) (a) of the Rules framed by the Patna High Court do not

satisfy the test of law and are in conflict with Article 19 (1) (g) of the Constitution of India and Section 30 of the Act, apart from being unreasonable, oppressive and discriminatory and are accordingly set aside.

(e) The minimum marks to be secured by an advocate in examination for Advocate on Record shall stand modified to 50% in the aggregate and 40% in each subject.

(f) It is left open to the High Court to frame the said Rules, afresh."

10. By means of these review petitions, the High Court seeks review of the judgment and order, dated 17.07.2015, aforementioned.

11. We have heard Mr. Bindhyachal Singh, learned Counsel, appearing on behalf of the review petitioners and Mr. (Dr.) Kumar Amitesh Chandra, learned Counsel, appearing on behalf of the respondents in Civil Review No. 154 of 2015. We have also heard Mr. K. K. Chaubey (Civil Review No. 153/2015), Mr. Yogendra Prasad Azad (Civil Review No. 154/2015), Mr. Chakrapani (Civil Review No. 155/2015), Mr. Rakesh Kumar (Civil Review No. 156/2015) and Ms. Anju Mishra (Civil Review No. 157/2015), appearing, in person, as respondents, in the review petitions, aforementioned.

12. Before we enter into the question as to whether the judgment and order, under review, call for review,



apposite it is, in our considered view, to bear in mind, that the scope of review, which has undergone, as the days have rolled by, some significant changes inasmuch as there was a time, when it was considered impermissible to review a judgment and order unless a statute provides therefor; but, the Courts, with the passage of time, have concluded that justice is, after all, a virtue, which must prevail over all barriers and that the rules, procedures or technicalities of law must, if necessary, bend before justice and that such a situation may arise, when a court finds that it has rendered a decision, which it would not have rendered, but for an assumption of fact, which, in fact, did not exist and its adherence to such a faulty decision would result in miscarriage of justice. In such cases, nothing can prevent a court from rectifying its own error, because the doctrine of "*actus curiae neminem gravabit*", (i.e., an act of court shall prejudice none), can be invoked, in such a case, for correcting the error committed by the court.

13. Similarly, at one point of time, it was considered to be a rule of universal application that review by a court of its order is not possible except on three prescribed 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 or order was passed, (ii)



mistake or error apparent on the face of the record or (iii) any such sufficient ground, which is analogous to the two grounds aforementioned. However, it has, now, surfaced in the light of the judicial pronouncements, that the expression, 'any sufficient ground', must be analogous to the two grounds aforementioned, is no longer a rule of universal application.

14. A review of a judgment and order is permissible, where a glaring omission or patent mistake or grave error has crept in, because of judicial fallibility.

15. This Court must remain mindful of the basic principle of review that a review is not a rehearing of a matter on merits and cannot be lightly entertained by the Court. Observed the Supreme Court, in **Sow Chandra Kanta v. Sk. Habib**, reported in **(1975) 1 SCC 674**,

"A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate, which should be a routine affair or a habitual step."



16. Yet another principle of review is that the power of review has to be exercised to prevent miscarriage of justice or correct grave and palpable error. Laid down the Supreme Court, in **Aribam Tuleswar Sharma v. Aibam Pishak Sharma**, reported in **(1979) 4 SCC 389**, following its earlier decision in the case of **Shivdeo Singh v. State of Punjab (AIR 1963 SC 1009)** as follows:

"There is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers, which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(Emphasis is supplied)

17. From the underlined portion, it becomes transparent that while an appellate Court is empowered to correct all matters of error committed by the subordinate court, review can be allowed on limited grounds and that the review cannot be sought for, much less allowed, on the ground that the decision was erroneous on merits inasmuch as such an aspect would be exclusively within the province of appellate court. Dealing with this aspect of review jurisdiction, the Supreme Court, in ***Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi (AIR 1980 SC 674)***, observed, thus:

*"Whatever be the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case and the finality of the judgment delivered by the Court will not be reconsidered except **where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.**"*

(Emphasis is added)

18. It must be, however, kept in mind that the above observations were made by the Supreme Court, while considering the scope of Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order XL Rule 1 of the Supreme Court Rules, and held, in ***Northern India Caterers (India)***

Ltd.(supra), as follows:

"It is well settled that a party is not entitled to seek a review of a judgment merely for the purpose of a rehearing and a fresh decision of the case. The general principle is that a judgment pronounced by a court is final and departure from this principle is justified only when circumstances of a substantial and compelling character make it necessary to do so".

19. For instance, if the attention of the Court was not drawn to a material statutory provision during the original hearing, the Court will review its judgment. (See, **Girdhari Lal Gupta v. D. H. Mehta and Another (AIR 1971 SC 2162)**). The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. (See, **O.N. Mohindroo v. The District Judge, Delhi and Another (AIR 1971 SC 107)** and **Northern India Caterers (India) Ltd. (supra)**).

20. It follows, therefore, that the power of review can be exercised for correction of a mistake, but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. A review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed, no further petition

for review can be entertained.

21. While considering the scope of the power of review, what needs to be noted is that under Section 114 of the Code, any person, considering himself aggrieved by a decree or order of a court from which appeal is allowed, but no appeal is preferred, or where there is no provision for appeal against the order or decree, may apply for review of the decree or order, as the case may be, in the court, which made the order or passed the decree.

22. Broadly speaking, thus, under Section 114 of the Code, review of a decree or order is possible if no appeal is provided against such a decree or order or where provisions for appeal exist, but no appeal has been preferred. This is really the substantive power of review. This substantive power of review under Section 114 has not laid down any condition as a condition precedent for exercise of the power of review nor has Section 114 imposed any fetters on the court's power to review its decision. No wonder, therefore, that the Supreme Court, in **Board of Control for Cricket, India and Another v. Netaji Cricket Club and Others (AIR 2005 SC 592)**, observed:

"We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its

*order if the conditions precedents laid down therein are satisfied. **The substantive provision of law does not prescribe any limitation on the power of the court except those, which are expressly provided in Section 114 of the Code in terms whereof, it is empowered to make such order as it thinks fit.***"

(Emphasis is added)

23. Lest the subtle but real distinction existing between the power of review, on the one hand, and the power of an appellate court, on the other, disappears completely, Order 47, Rule 1 circumscribes a court's power of review by specifying the three grounds on which review is possible, the specific grounds being, (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 or order was passed, (ii) mistake or error apparent on the face of the record and (iii) for "*any other sufficient reason*".

24. Having taken into account the said three grounds, which Order 47, Rule 1 embodies as the grounds for review, the Supreme Court, in **Moran Mar Basselios Cathlicos v. Mar Poulose Athanasius (AIR 1954 SC 526)**, held that power of review is circumscribed by the three grounds, which have been specified in Order 47, Rule 1.

25. Explaining the scope of the third ground of



review mentioned in Order 47, Rule 1, namely, "*any other sufficient reason*", the Supreme Court, in **Moran Mar Basselios Cathlicos** (supra), held that "*any other sufficient reason*" cannot be "*any sufficient reason*", but a reason, which is "*sufficient*" and, at the same time, at least, "*analogous*" to one of the two reasons as indicated hereinbefore, 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 or order was passed and (ii) mistake or error apparent on the face of the record.

26. In short, thus, what **Moran Mar Basselios Cathlicos** (supra) laid down was that the expression, "*any other sufficient reason*", cannot be construed as "*any sufficient reason*" and that "*any sufficient reason*" cannot become a ground for review unless even such "*sufficient reason*" is "*analogous*" to one of the other two grounds mentioned in Order 47, Rule 1, 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 or (ii) mistake or error apparent on the face of the record.

27. Board of Control for Cricket, India (supra)



is one of those cases, which has elaborately dealt with the scope of the power of review, particularly, of the High Courts and, having considered the case of **Moran Mar Basselios Cathlicos** (supra), the Supreme Court has clarified, in no uncertain words, in **Board of Control for Cricket, India** (supra), that the rule that "*any other sufficient ground*" must be "*analogous*" to the other two grounds, as mentioned in Order 47, Rule 1, "*is not a rule of universal application*". The relevant observations, made, at paragraph 91, in **Board of Control for Cricket, India** (supra), in this regard, read:

"91. It is true that in **Moran Mar Basselios Cathlicos v. Most Rev. Mar Poulouse Athanasius**, MANU/SC/0003/ 1954 : [1955] 1 SCR 520, this court made observations as regards limitations in the application of review of its order stating: Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil procedure which is similar in terms of 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, at least analogous to those specified in the rule", but the said rule is not universal.***

(Emphasis is supplied)

28. We may pause here to point out that when a judgment of the Supreme Court is explained by a subsequent Bench of the Supreme Court, such an explanation of its own judgment by the Supreme Court carries the same authority as does the decision, which has been explained by it. Hence, in the face of the decision, rendered in **Board of Control for Cricket, India** (supra), it cannot be contended that no ground, other than the grounds mentioned in **Moran Mar Basselios Cathlicos** (supra), can ever become a ground for review of an order or decision by a High Court.

29. In fact, there is plethora of judicial pronouncements of the Supreme Court, which shows that there can be exceptional cases, where a deviation from the grounds of review, as propounded in **Moran Mar Basselios Cathlicos** (supra), is possible and one of such cases is the case of **Lily Thomas v. Union of India**, reported in **(2000)**



6 SCC 224 : 2000 CriLJ 2433, wherein, having taken into account the facts that (a) the power of review is a creation of statute and not an inherent power, that (b) no power of review can be exercised if not given to a court or Tribunal either specifically or by necessary implication; and that (c) under the guise of review jurisdiction, merit of a decision cannot really be examined, the Supreme Court has, in unequivocal terms, pointed out that justice is, after all, a virtue, which must prevail over all barriers and that the rules, procedures or technicalities of law must, if necessary, bend before justice and that such a situation may arise, when a court finds that it has rendered a decision, which it would not have rendered, but for an assumption of fact, which, in fact, did not exist and its adherence to such a faulty decision would result in miscarriage of justice. In such cases, rules **Lily Thomas** (supra), nothing can prevent a court from rectifying its own error, because the doctrine of "*actus curiae neminem gravabit*", (i.e., an act of court shall prejudice none), can be invoked, in such a case, for correcting the error committed by the court.

30. The real theme of the Supreme Court's decision, in **Lily Thomas** (supra), is that though the power of review cannot be exercised by a court unless the statute confers such a power and that a statutory power of review can

be exercised subject to such limitations as the statute may impose, yet a court is not powerless, in an appropriate and exceptional case, to rectify its error, because "*an act of court shall prejudice none*" and, hence, in exceptional cases, a court can invoke the doctrine of "*actus curiae neminem gravabit*" for correcting an error committed by it.

31. In fact, from the decision in **Municipal Board, Pratabgarh v. Mahendra Singh Chawla**, reported in **(1982) 3 SCC 331: AIR 1982 SC 1493**, what clearly emerges is that when a High Court acknowledges its error and rectifies its error, which has crept in, what the High Court really does is restore the rule of law and not defeat it. Points out the Supreme Court, in **Municipal Board, Pratabgarh** (supra), that laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Further observed the Supreme Court, in **Municipal Board, Pratabgarh** (supra), on this aspect of law, thus,

*".... Undoubtedly, rule of law must prevail but as is often said, 'rule of law must run akin to rule of life. And life of law is not logic but experience'. **By pointing out the error, which according to us crept into the High Court's judgment, the legal position is restored and the rule of law has been ensured its pristine glory...**".*

(Emphasis is added)

32. The law, on the subject of review, may, in the light of the discussions held, as a whole, be summarized thus:

(i) Ordinarily, a court or a tribunal cannot review its order or decision if the statute does not confer on the court or the tribunal, as the case may be, the power to review its own order. This apart, whatever limitations are imposed by a statute, while conferring the power of review on a court or a tribunal, the court or the tribunal, as the case may be, must adhere to the limitations, which the relevant statute may impose on the exercise of such power. Section 114 CPC, which embodies the substantive power of review of a civil court, does not impose any limitations on the court's power to review its order or decision; yet the power of review even by a civil court cannot be unguided and uncanalised, for, Order 47, Rule 1 circumscribes the court's power of review.

(ii) Though, at one point of time, it was considered to be a rule of universal application that review by a court of its order is not possible except on three prescribed 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 or order was passed and (ii) mistake or error apparent on the face of the record or (iii) any such sufficient ground, which is analogous to the two grounds

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aforementioned, the subsequent development of law, on the subject of review, has shown that the grounds referred to, namely, that any sufficient ground must be analogous to the two sufficient grounds aforementioned is no longer a rule of universal application.

(iii) One of the cases, which has helped in the expansion of the court's power to review its order is the case of **Lily Thomas** (supra) inasmuch as **Lily Thomas** (supra) ruled that ordinarily, the power of review, being a creature of statute, cannot be exercised as an inherent power, yet such technicalities of law may have to be bent, in an appropriate cases, for the purpose of correcting an order committed by the court if such an error arises out of a presumption of fact, which was nonexistent, and when the court finds that its refusal to review its own error would cause, or has caused, grave miscarriage of justice.

(iv) It is essentially the principle behind the doctrine of "*actus curiae neminem gravabit*", which has made the court hold, in **Municipal Board, Pratabgarh** (supra), that when a court corrects and rectifies an error, it restores the rule of law and not defeat it. Even **Rajesh D. Darbar v. Narasingrao Krishnaji Kulkarni**, reported in **(2003) 7 SCC 219**, recognises that in an exceptional case, a court may have to review its order by invoking the doctrine of "*actus curiae*

neminem gravabit".

33. It is in the backdrop of the above developments of law on the scope of review, that these review petitions need to be, now, dealt with and decided.

34. Appearing on behalf of the review petitioners, Mr. Bindhyachal Singh, learned Counsel, has drawn our attention to some parts of the judgment and order, under review, contending, *inter alia*, that this Court fell in error in omitting to notice the ambit of Section 30 *vis-à-vis* Section 34 of the Act, the High Court's power to regulate or restrict, in certain manner and in some respects, an advocate's right to practice in the High Court.

35. Describing the errors '*as errors apparent on the face of the record*', Mr. Bindhyachal Singh, learned Counsel, submits that the review petitioner, have been able to make out a case for review of the judgment and order, under review.

36. Though a faint attempt was made, by and on behalf of the respondents in the review petitions, particularly, by Mr. Chakrapani, who has appeared, in person, as the writ petitioner, to resist the review petitions, at its threshold, on the ground that the judgment and order under review suffer from no error, far less *an error apparent on the face of the record*, and that the review petitions are, in effect, appeals in

disguise and call for correction of the judgment and order, which is impermissible in law.

37. We must record, in fairness to the respondents and the learned Counsel for the respondents appearing in the review petitions, that at a later stage, the review petitions have not been resisted on the ground that *no error apparent on the face of the record* could be pointed out by the review petitioners; rather, what has been contended, by and on behalf of the respondents in the review petitions, is that the Rules are bad in law being violative of Articles 14 and 19(1)(g) of the Constitution of India and Sections 30 and 34 of the Act and the impugned Rules cannot be sustained.

38. The argument, so advanced, necessarily and, admittedly, relates to, as fairly acknowledged by, and on behalf of, even the respondents in the review petitions, merit of the writ petitions and not to the errors, which have been pointed out by the review petitioners as *errors apparent on the face of the record*.

39. Situated thus, it becomes clear that the respondents, in the review petitions, did not object to the determination afresh of the merit of the writ petitions.

40. Notwithstanding, however, the fact that even the respondents, in the review petitions, agreed to make submissions and did make some submissions on the merit of



the writ petitions, we deem it appropriate to broadly deal with some of the salient features of the review petitions in order to determine if a case calling for review of the judgment and order, dated 17.07.2015, aforementioned, has or has not been made out.

41. For the purpose of having clarity, we may, at the very outset, point out that the judgment and order, under review, holds, in effect, at page 16 and 17, that when a Court makes observations dismissing a writ petition, the observations made therein, with regard to the position of law determined therein, cannot be treated as an authoritative pronouncement of law.

42. With regard to the above, it is pointed out by Mr. Bindhyachal Singh, learned Counsel, that the position of law, so recorded in the judgment and order, under review, is *an error apparent on the face of the record* inasmuch as a Court may have to record the correct position of law even in order to dismiss a writ petition so that the parties and the people know as to what is the correct position of law and why the writ petition has been dismissed and, therefore, the position of law determined in a judgment and order, while dismissing a writ petition, will not denude the judgment and order of its authority as a judicial precedence if the judgment and order, otherwise, carry the authority as a judicial

precedent.

43. While dealing with the error so pointed out, we find that it has, indeed, been observed by the learned Chief Justice, at page 17, speaking for the Court, that the observations, made by the Division Bench, in **Prayag Das Vs. Civil Judge, Bulandshahar and Others (AIR 1974 All 133)**, cannot be treated as an authoritative pronouncement on the subject, more so, when they were made, while dismissing the writ petition and when the effected parties were not before it.

44. We are of the view that the observations so appearing in the judgment and order, under review, do not correctly lay down the position of law inasmuch as a Court, even while disallowing an application, appeal or revision, may have to discuss the law and, on the basis of position of law as may be concluded or dismissed, such an application, appeal or revision may have to be dismissed.

45. Not necessary, therefore, it is that a pronouncement of law, on a given subject, would not hold the force of binding precedent merely because the writ petition was dismissed, while pronouncing the law and/or that the affected parties were not before the Court.

46. In a situation, such as the one, as depicted above, the pronouncement of law will not lose its authority as



a precedent merely because the writ petition was dismissed or the affected parties were not before the Court. In a given case, however, if the affected parties appear before the Court seeking review of such an order, it would be permissible for the Court to hear the parties for the purpose of determining the correctness of the pronouncement of law; but so long as the decision stands, the law laid down therein would hold good as an authoritative pronouncement, no matter whether the writ petition is dismissed or allowed or the affected parties had or had not been heard.

47. It is contended, on behalf of the review petitioners, that in **R. K. Anand Vs. Registrar, Delhi High Court**, reported in **(2009) 8 SCC 106**, the Supreme Court has issued directions to the High Courts to frame rules under Section 34 of the Act and consider making of rules, on the subject of *Advocate-on-Record*, on the pattern of Supreme Court.

48. Thus, according to Mr. Bindhyachal Singh, learned Counsel, the system of having *Advocate-on-Record*, in the High Courts on the pattern of the Supreme Court, having been recommended, in **R.K. Anand's** case (supra), by the Supreme Court itself, impugned rules (relating to *Advocate-on-Record*), could not have been interfered with; yet the relevant observations, appearing in **R.K. Anand's**

case (supra), escaped the attention of the Court, while coming to the conclusions, which the Court has reached, leading to the writ petitions being partly allowed.

49. Reacting to the above submissions made on behalf of the review petition, Mr. Chakrapani, learned Counsel, who appears in person, points out that the observations appearing, at paragraph 344 (3), in **R.K. Anand's** case (supra), which read, "*those of the High Courts which have so far not framed any rules under Section 34 of the Advocates Act, shall frame appropriate rules without any further delay as directed in paras 242 and 243 of the judgment*", command the High Courts to frame Rules under Section 34 of the Act, but the Supreme Court's observations, which read, "*The High Courts may also consider framing rules for having Advocates-on-Record on the pattern of the Supreme Court of India*" do not, in specific terms, command the High Courts to frame rules relating to *Advocate-on-Record* on the pattern of the Supreme Court; rather, the Supreme Court directs the High Courts to consider framing rules relating to *Advocates-on-Record* on the pattern of the Supreme Court.

50. Before we express any opinion on the above submissions made on behalf of the review petitioners, let us examine the relevant observations of the Supreme Court appearing in **R.K. Anand's** case (supra). These observations,

appearing in **R.K. Anand's** case (supra), at paragraph Nos. 242, 243 and 344 (3), read as under:

242. *Ideally every High Court should have rules framed under Section 34 of the Advocates Act in order to meet with such eventualities but even in the absence of the rules the High Court cannot be held to be helpless against such threats. In a matter as fundamental and grave as preserving the purity of judicial proceedings, the High Court would be free to exercise the powers vested in it under Section 34 of the Advocates Act notwithstanding the fact that rules prescribing the manner of exercise of power have not been framed. But in the absence of statutory rules providing for such a course an advocate facing the charge of contempt would normally think of only the punishments specified under Section 12 of the Contempt of Courts Act. He may not even imagine that at the end of the proceeding he might end up being debarred from appearing before the court. The rules of natural justice, therefore, demand that before passing an order debarring an advocate from appearing in courts he must be clearly told that his alleged conduct or actions are such that if found guilty he might be debarred from appearing in courts for a specific period. The warning may be given in the initial notice of contempt issued under Section 14 or Section 17 (as the case may be) of the Contempt of Courts Act. Or such a notice may be given*

However, to our mind, the direction to consider, given by the Supreme Court in **R.K. Anand's** case (supra), cannot be taken lightly and must be given due respect and the importance, which the observations deserve.

52. While considering the above observations made in **R.K. Anand's** case (supra), this Court, as a High Court, has to remain alive to the law laid down by the Apex Court, in **Spencer and Company Limited and Another v. Vishwadarshan Distributor (Private) Limited and Others**, reported in **(1995) 1 SCC 259**, that even request of the Supreme Court to a High Court should be treated to be binding.

53. Observed, therefore, the Supreme Court, in **Spencer and Company Limited** (supra), in no uncertain words, thus,

"1. It has been said before, and needs to be said again, what we are about to through this order, to strengthen the functional chains which pull the judicial machine to its destination on the track laid by the Constitution.

.....

4. Patently our order dated 14-1-1994 has been flouted, which is a matter of grave concern to us. On our part what else is expected? It has obvious ramifications, far and significant. **Conceivably our action has parameters ranging**

between total apathy and punishment for contempt after initiating contempt proceeding. They have, in all seriousness, in one voice, advised us to show at this juncture judicial statesmanship, and let the present order go on record, more as a reminder and a message, travelling far and wide, less as a warning, solely to uphold and preserve the independence and majesty of the Supreme Court, as the highest court of justice in the Sovereign Republic of India; a pillar of the body politic, established under the Constitution, conferred with plenary powers under Articles 141, 142 and 144 of the Constitution. We appreciate and value their advice. We would rather remain advised on a matter like this, for then we are on sure ground.

.....

6. Ex facie courtesy is the blend of our order of 14-1-1994. Outwardly it is neither commanding in nature nor explicitly in terms of a direction. Such is not the sheen and tone of our order, meant as it was, for a high constitutional institution, being the High Court. It comes from another high constitutional institution (this Court) hierarchically superior in the corrective ladder. **When one superior speaks to another it is always in language sweet, soft and melodious; more suggestive than directive. Judicial language is always chaste.**

.....

9. Recently, on a lesser aberration, this Court in *Bayer India Ltd. v. State of Maharashtra*, (1993) 3 SCC 29, had occasion to strike a sad note in the following words: (SCC pp. 31-32, paras 5-6)

"5. We are saddened to notice that in spite of the Court's request contained in this order dated 6-2-1991, the High Court has not disposed of the review petition till now. The High Court was requested to dispose of the said writ petition within four months from the date of the said order and, at any rate, by 30-9-1991. It is more than two years since the order was made. **While we certainly respect the independence of the High Court and recognise that it is a co-equal institution, we cannot but say, at the same time, that the constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of this Court which are binding on all courts within the territory of India. The request made in this case was contained in a judicial order. It does no credit to either institution that it has not been heeded to. We hope and trust that the delay in the disposal of the review is either accidental or on**

account of some or other procedural problem. Be that as it may, the present situation would not have arisen if only the review petition had been disposed of within the time contemplated in the order dated 6-2-1990.

The case which we are dealing with is far more angular because there is a deliberate and conscious obstruction, put and recorded by the Hon'ble Judges of the High Court, even when the judicial order of this Court dated 14-1-1994 was before them, in support of the prayer for an early durated hearing of the appeal. The case in hand is of a negative or reverse action, whereas Bayer India case¹ was barely of inaction, far less in gravity.

10. The afore-narrated words, we think, presently, are enough to assert the singular constitutional role of this Court, and correspondingly of the assisting role of all authorities, civil or judicial, in the territory of India, towards it, who are mandated by the Constitution to act in aid of this Court. That the High Court is one such judicial authority covered under Article 144 of the Constitution is beyond question. The order dated 14-1-1994 of this Court was indeed a judicial order and otherwise enforceable throughout the territory of India

under Article 142 of the Constitution. The High Court was bound to come in aid of this Court when it required the High Court to have its order worked out.

(Emphasis is supplied)

54. Leaving none in doubt, the Supreme Court observed, in **Spencer and Company Limited** (supra), that the language of request oftenly employed by this Court in such situations is to be read by the High Court as an obligation in carrying out the constitutional mandate maintaining the writ of the Supreme Court running throughout the country.

55. Considered thus, it becomes clear that the conclusions drawn in the judgment under review, without taking into notice, inadvertently indeed, the observations made by the Supreme Court, in the case of **R.K. Anand's** (supra), will, in fact, amount to both, glaring omission and patent mistake, in the judgment under review.

56. Unless, therefore, it is judicially determined that under our Constitutional scheme or under the relevant statutory provisions, it is impermissible to have rules, in a High Court, relating to *Advocates-on-Record* on the same pattern as the Supreme Court has, it would not be proper, on our part, to take the view that impugned provisions, relating to the *Advocates-on-Record*, are bad in law.



57. At any rate, the observations, appearing in **R.K. Anand's** case (supra), ought to have been kept in mind by the Court, while making the judgment and order under review, and as these observations do not appear to have been taken note of, and clearly escaped the notice of, the Court, there is, we find, *an error apparent on the face of the record* inasmuch as the error relates to not only a relevant fact, but a fact, which was integral to the very interpretation of the system of *Advocates-on-Record*, which the impugned rules have introduced in the Patna High Court.

58. It is pointed out, on behalf of the review petitioners, that the Court has fallen in error in holding that the Supreme Court Rules, 2013, do not go to the extent of making the right of an advocate to practice in the Supreme Court dependent upon his being certified as an *Advocate-on-Record*, and, hence, is not violative of the advocates' right to practice under Article 19(1)(g) of the Constitution of India.

59. It is the submission of Mr. Bindhyachal Singh that the proviso to Clause 1 of Order IV of the Supreme Court Rules, 2013, and Clause-7 (c) of Order IV of the Supreme Court Rules, 2013, regulate the pleading and acting of advocate in Supreme Court inasmuch as Clause 7 (c) of Order IV of the Supreme Court Rules, 2013, reads,

"No advocate other than an

advocate-on-record shall be entitled to file an appearance or act for a party in the Court."

60. Though what has been pointed by Mr. Bindhyachal Singh, as noted above, is an important aspect of the writ petition, this aspect of the writ petition will call us to comment on the merit of the judgment under review and would, therefore, be not an *error apparent on the face of the record* inasmuch as the question as to whether the Court's conclusion, reached to the effect that *Rule 4 of the Rules prohibits an advocate from practicing* is wholly correct or wholly incorrect or partly correct or partly incorrect, relates to merit of the judgment and order under review and cannot, therefore, be advanced, in our considered view, as a ground for review.

61. Mr. Bindhyachal Singh, learned Counsel, points out that the judgment under review suffers from an *error apparent on the face of the record* inasmuch as the judgment, while reproducing the observations made by the Supreme Court, in **Harish Uppal vs. Union of India and Another**, reported in **(2003) 2 SCC 45**, observes that Section 30 had not come into force at the time, when the decision, in **Harish Uppal's** case (supra), was delivered, but the Court failed to notice that it had also been observed, at paragraph 34 in **Harish Uppal's** case (supra) itself, that even if Sections 30

and 34 were to be enforced, it would not alter the situation or the position of law. The relevant observations, appearing at paragraph 34 of **Harish Uppal's** case (supra), in this regard, read thus:

"34. One last thing which must be mentioned is that the right of appearance in courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to



practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file vakalat on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right



to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the



*Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practise in courts. **Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court.** An advocate appears in a court subject to such conditions as are laid down by the court. **It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India.** There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other.”*

(Emphasis is added)



62. From a close reading of the observations, appearing at paragraph 34 in **Harish Uppal's** case (supra), we notice that it clearly escaped the attention of this Court, while delivering the judgment and order, under review, that the Supreme Court has taken the view, in **Harish Uppal's** case (supra), that even if Section 30 of the Act had been brought into force, it's (Supreme Court's) conclusion, that an advocate does not have absolute right to appear in Court, would not have changed and even if Section 30 were to brought into force inasmuch as control of proceedings, in Court, will always remain with the Court. This aspect of the case has gone un-noticed in the judgment and order, under review, and would, therefore, constitute an *error apparent on the face of record*.

63. Mr. Bindhyachal Singh, learned Counsel, also points that the judgment and order, under review, do not take into account the provisions of Clauses 7 and 8 of the Letters Patent of Patna High Court, which empower the Patna High Court to make rules for qualification and admission of proper persons as advocates in Patna High Court.

64. While considering the above submissions made on behalf of the review petitioners, it may be noted that Clauses 7 and 8 of the Letters Patent of this Court were relevant and ought to have been taken into consideration

before the judgment under review was delivered. To this extent, therefore, there is, to our mind, an error, which is *an error apparent on the face of the record*.

65. It is next pointed out by Mr. Bindhyachal Singh, learned Counsel, that while delivering the judgment and order under review, this Court has not considered Rule 3 (c) of the impugned Rules of the Patna High Court, which defines *Advocate-on-Record* to mean those advocates, who intend to act in addition to plead. Insists Mr. Bindhyachal Singh, learned Counsel, that pleading by the advocates, in Patna High Court, is not restricted under the impugned Rules inasmuch as the impugned Rules, according to Mr. Bindhyachal Singh, learned Counsel, intend only to regulate the acting aspect of practice in Patna High Court.

66. Presenting the review petitioners' case that the judgment and order, under review, suffers from contradictions inherent therein and do not, therefore, lay down a workable scheme, relating to the system of the *Advocates-on-Record*, which the Court, while delivering the judgment and order, under review, has nonetheless maintained, Mr. Bindhayachal Singh, learned Counsel, has pointed out that while the judgment, under review, has quashed Rule 4 by observing to the effect that the right of an advocate to be engaged by a client or litigant cannot be infringed, the Court has not

touched Rule 9 of the impugned rules, which prohibits filing *vakalatnama* and *memorandum of appearance* by an advocate, who is not registered as an *Advocate-on-Record* under the impugned rules.

67. On the above aspect, too, we agree with Mr. Bindhayachal Singh, learned Counsel, that the judgment and order, under review, while quashing Rule 4, have not interfered with Rule 9, which prohibits filing *vakalatnama* and *memorandum of appearance* by an advocate, who is not registered as an *Advocate-on-Record*. Thus, the judgment and order, under review, to the effect of presenting a non-workable situation in the functioning of the High Court inasmuch as Rule 9 cannot be left untouched if Rule 4 is quashed.

68. Whether Rule 9 can at all be touched is a question, which relates to the merit of the writ petition and we would not, therefore, examine this issue in the present review petitions.

69. We find substance in the submission of Mr. Bindhayachal Singh, learned Counsel, that the judgment and order, under review, leave room for confusion and call for review inasmuch as the judgment, under review, lays down to the effect that there is no requirement for an advocate to be registered as an *Advocate-on-Record* for filing *vakalatnama* or



filing petitions/pleadings, yet the Court retained the examination system for admitting/registering the *Advocate-on-Record* by only lowering the qualifying/passing marks. This is, indeed, the situation, which the judgment, under review, has created and when the judgment and order suffer *ex facie* from contradictions inherent therein, it calls for its review on the ground of *error apparent on the face of the record*; or else, the confusion will lead to miscarriage of justice.

70. Because of what have been discussed and pointed out above, we are clearly of the view that the judgment and order, under review, suffer from *errors apparent on the face of the record* and, therefore, call for review.

71. In the result and for the reasons discussed above, we allow these review petitions and direct that these writ petitions may, now, be listed for hearing at an early date so that the prevailing uncertainty may be arrested and a clear picture, with regard to the validity or otherwise of the impugned Rules, can be effectively determined.

72. Before parting with this set of review petitions, we consider it our duty to point out that we have consciously refrained ourselves from either noting down, or making any reference to, the submissions, which have been made by the review petitioners and their learned Counsels on the merit of

the writ petitions, so that they remain free and without prejudice by the fact that the review petitions have been allowed and it would, therefore, permit the writ petitioners to advance such submissions, which they deem necessary and relevant for the purpose of just decision in the writ petitions.

(I. A. Ansari, ACJ.)

Shivaji Pandey, J. : I agree.

(Shivaji Pandey, J.)

Sudhir Singh, J. : I agree.

(Sudhir Singh, J.)

Prabhakar Anand/AFR

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