

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**REVIEW PETITION NO. 33 OF 2014
IN
LETTERS PATENT APPEAL NO. 83 OF 2014
IN
WRIT PETITION NO. 145 OF 2012**

Hemant W. Sawant and Ors.	}	Petitioners
Versus		
Mahindra and Mahindra Ltd.	}	Respondents

Mr. Girish Godbole with Mr. Parag Tilak and
Mr. H. J. Engineer i/b. M/s. Gordhandas and
Fozdar for the Petitioners.

Mr. N. B. Jalota with Mr. Ghanshyam K.
Tripathi for the Respondent.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- OCTOBER 21, 2015

P.C. :-

We have heard Mr. Godbole appearing for the Review
Petitioners.

2) The Petitioners seek a review of order dated 7th May, 2014
passed in Appeal No. 83 of 2014 in Writ Petition No. 145 of 2012.

3) The Review Petitioners are the original Appellants in the
Appeal. Mr. Godbole, learned Counsel appearing in support of the

Review Petition would submit that the Writ Petition was directed against the award dated 4th August, 2011 rejecting a reference under the Industrial Disputes Act, 1947.

4) Mr. Godbole would urge that in the reference, the Appellants/original second party had, in their statement of claim, prayed that the workmen are entitled for reinstatement with full back-wages and continuity of service from the date of termination as stated in Annexure 'A' to the statement of claim.

5) There were alternative reliefs requesting the Industrial Tribunal to direct the first party company/Respondent before us to pay amounts deducted by way of discounting factor along with interest at the rate of 18% from the date when the amount was payable till the date of payment.

6) Mr. Godbole would urge that the Review Petitioners are not seeking re-hearing of the Appeal disposed of by this Court. However, in the order under review, this Court has erroneously recorded that the reference was with respect to only reinstatement. The other issue was not referred.

7) Mr. Godbole would urge that the nature of the dispute was not understood correctly by the learned Single Judge and equally by the

order under review. The dispute was that there is a voluntary retirement scheme (VRS) and which is thrust and foisted on the workmen. In the event this was a scheme completely one sided and not acceptable, then, enforcing such a scheme would be nothing but terminating the workmen. However, that was not the only claim. Understood properly and completely, the dispute in the alternative was with regard to proper interpretation of three circulars under which the discounts have been made and which resulted in workmen not receiving the sums promised. Neither the earlier claim made under section 33C(2) of the Industrial Disputes Act, 1947 nor any orders passed in relation to that claim would prohibit the workmen Appellants before this Court from seeking the alternate relief. The reinstatement not being granted and that part of the order being not interfered with does not mean that the alternate claim or other issue should have been left out of consideration. More so, when the discounting factor was sought to be referred in a circular. That circular is claimed to be issued in Marathi and English language. In any event, the discounting factor is not mentioned in Marathi circular. The English circular and based on which the claim was resisted by the company was not supported by oral evidence, particularly the cross examination of the company's witnesses. For all these reasons, Mr.Godbole would submit that the order under review should be quashed and set aside.

8) Alternatively, he would submit that this Court was exercising powers under Article 226 of the Constitution of India. This Court in order to render complete justice should not have merely dismissed the Petition with liberty to the workmen of seeking any other reliefs or adopting any other proceedings for recovery of amounts as per the relevant applicable VRS but the learned Single Judge as also the Division Bench in Appeal should have directed the Government to make a reference of the alternate claim and for adjudication by the Industrial Tribunal. That relief should have been granted.

9) Reliance is heavily placed by Mr. Godbole on the judgment of Hon'ble Supreme Court in the case of *State Bank of India vs. Ram Chandra Dubey* reported in **(2001) 1 SCC 73** and the other judgment in the case of *Ramesh Chandra Sankla and Ors. vs. Vikram Cement and Ors.* reported in **(2008) 14 SCC 58**.

10) After having heard Mr. Godbole at great length and perusing with his assistance the order under review, we are unable to agree with him. Repeatedly, the Hon'ble Supreme Court has held and clarified that Review Jurisdiction is not to be equated with either Appeal or a Revision. By any stretch of imagination, it cannot be converted into a re-hearing of the proceedings in which the earlier order has been passed. If allowing the Review Petition necessitates consideration of

elaborate arguments and requires the Court to peruse all the records and go behind the judgment under review, then, that is a impermissible exercise. Mr. Godbole would like us to precisely undertake such a exercise. We would have to go behind the judgment rendered not only by the Division Bench in Appeal but also by the learned Single Judge for determining their correctness on merits. We would have then to refer the pleadings in the reference. We would have to undertake scrutiny of the documentary evidence before the Industrial Tribunal. That is nothing but a re-hearing of the entire Petition, which stands dismissed by the order of the learned Single Judge and which has been confirmed in the Appeal by the Division Bench. The ambit and scope of Review Jurisdiction is clear. In the judgment of Hon'ble Supreme Court in the case of *Kamlesh Verma vs. Mayawati and Ors.* reported in **AIR 2013 SC 3301** the Hon'ble Supreme Court has summarised the principles in the following words:-

“.....

14. Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court, in *Jain Studios Ltd. v. Shin Satellite Public Co. Ltd.* (2006) 5 SCC 501 : (AIR 2006 SC 2686), held as under:

“11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer

had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of "second innings" which is impermissible and unwarranted and cannot be granted."

15. Review proceedings are not by way of an appeal and have to be strictly confined to scope and ambit of Order XLVII, Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the Principles:

16. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in *Chhajju Ram v. Neki*, AIR 1922 PC 112 and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasiasius & Ors.*, (1955) 1 SCR 520 : (AIR 1954 SC 526), to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.*, JT 2013 (8) SC 275 : (2013 AIR SCW 2905).

- (B) When the review will not be maintainable:-
- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
 - (ii) Minor mistakes of inconsequential import.
 - (iii) Review proceedings cannot be equated with the original hearing of the case.
 - (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
 - (v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.
 - (vi) The mere possibility of two views on the subject cannot be a ground for review.
 - (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
 - (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
 - (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

12) The course open to the Review Petitioners is to challenge the judgment in a higher Court. In Review Jurisdiction, neither this Court can assist the Petitioners/Appellants/workmen by accepting their alternate prayer nor can modify and alter the judgment under review by issuing additional directions. In all these circumstances, though we sympathize with parties like the Petitioners, we are unable to agree with Mr. Godbole. The Review Petition is therefore misconceived and is dismissed.

13) In that view of the matter, we are not required to make any reference to the judgments cited by Mr. Godbole. They could be referred and considered if we were to decide the original case. That

being already decided, we need not refer to them in further details. The Review Petition is therefore dismissed.

14) In all fairness, we grant the Review Petitioners leave to amend the memo of Review Petition and all references which have been made in the Review Petition, particularly while narrating facts at page 7 shall stand deleted. Meaning thereby, the only reference that would remain is to the argument canvassed before the Division Bench in Appeal by the Review Petitioners and the Counsel for the other side. Beyond that, whatever is attributed to the Division Bench and in deciding the Appeal and all references of that nature stand deleted.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)