

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.263 of 2016

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Smt. Shanti Lata Ghosh wife of Late Khudi Ram ghosh, Resident of Mohalla Anugrah Narain Road, near Clinic of Dr. Jamuna Prasad Singh, Police Station Kotwali, Town and District Gaya, having her shop at Mohalla Gautam Budha Road, Police Station Kotwali, Town and District Gaya.

.... Respondent/Petitioner

Versus

Smt. Pushpa Shee, wife of sri Tapan Kumar Shee, resident of Mohalla Gautam Budha Road, Police Station Kotwali, Town and District Gaya, at present residing in the House of Sri Brajesh Kumar Sharma, Swarajpura Bhawan, new Area Piparpanti, Police Station Kotwali, Town and District Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Nikhil, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 16-11-2016

Heard learned counsel for the petitioner and learned counsel for the opposite party.

Considering the submissions on behalf of the petitioner, it becomes evident that the entire endeavour of the petitioner is to persuade this Court to go into the question of fact on the basis of fresh evidence by way of photographs which the petitioner has claimed to have procured now as stated in paragraph no. 8 of the review application as well as the supplementary affidavit. It has also been contended on behalf of the petitioner that this Court has committed error in framing additional substantial question of law



and has wrongly revisited the concurrent finding of fact by both the courts below on the issue of personal necessity. It has also been canvassed that this Court has omitted to consider the hardship to the petitioner which may result consequent to eviction from the suit premises as it is the only source of income for her livelihood. Lastly, it has also been urged that the matter was not adequately presented by the learned counsel for the petitioner at the time of hearing.

Learned counsel for the opposite party, however, has submitted that the review jurisdiction of this Court is limited and is circumscribed by the provision of Order 47 Rule 1 CPC. It has been contended that it is not the case of the petitioner that any material evidence or submission on behalf of the petitioner has been omitted from consideration. It has been submitted that the inadequacy of the submission by the lawyer as raised in paragraph 8 of the supplementary affidavit or production of new evidence by way of some photographs as pleaded in paragraph 8 of the revised application cannot be ground for review of a well considered judgment. It has been further propounded that unless the error apparent on the face of record or sufficient reason is shown or established the prayer for review cannot be allowed.

After considering the submissions and perusal of the judgment under review, it is evident that this Court has passed the judgment after considering the submissions on behalf of the parties.



It is not the case of the petitioner that any part of the submissions or any material evidence has been ignored while passing the judgment under review. It is also not the case on behalf of the petitioner that the judgment under review is against the settled principle of law or there is any error apparent on the face of the record. The creation of new evidence after the judgment, or assertion that the matter was not adequately presented by the learned counsel cannot be a ground for review and rehearing of the appeal. Their lordships in the case of ***Haridas Das v. Smt. Usha Rani Banik & Ors., AIR 2006 S.C. 1634*** have ruled as follows.

"The parameters are prescribed in Order 47 Rule 1 C.P.C. The former part deals with a situation attributable to the appellant and the later part to a jural action which is manifestly incorrect or on which two conclusions are not possible.

Neither of them postulates a rehearing of the dispute because a party has not highlighted all aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedent to the court and thereby enjoyed a favourable verdict."

The contention on behalf of the petitioner that the additional substantial question of law could not have been framed for the purpose of revisiting the finding of fact is clearly devoid of



merit in view of the express provision under Section 100(5) (proviso) C.P.C. Moreover, from the judgment under review it is transparent that the learned counsel for both sides had made their submissions on the additional substantial question of law.

It is trite that the review jurisdiction cannot be invoked by a litigant as an appeal in disguise.

As there is no error apparent on the face of record or any other sufficient reason, this Court does not find any merit in the review application which is, accordingly, dismissed.

(V. Nath, J)

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