

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.722 of 2016**

Central Bank Of India

.... Appellant/s

Versus

Ramesh Kumar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Sinha

For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 27-09-2016

Heard learned counsel, Ajay Kumar Sinha, appearing
for the petitioner.

2. Perused the order dated 15.03.2016 passed by the
Additional District Judge, Khagaria in Misc. Case No. 02 of 2015,
whereby the learned court below has dismissed the miscellaneous
case and refused to review the judgment and decree passed in
Money Appeal No. 01 of 2012.

3. It appears that the plaintiff-respondent filed Money
Suit No. 04 of 2003 against the Central Bank of India, the
petitioner. The suit was decreed. Against the said judgment and
decree passed by the trial court, an appeal being Money Appeal
No. 01 of 2002 was filed before the lower appellate court. The
lower appellate court dismissed the appeal on merit after hearing
the parties. Thereafter, review application has been filed under
Order 47 Rule 1 C.P.C. on the ground that while deciding the

appeal, the court below has not considered the question of limitation raised by the petitioner. The court below, by the impugned order, has dismissed miscellaneous case.

4. Learned counsel for the petitioner submitted that the court below could not have dismissed the miscellaneous case, which was filed for review of the judgment and decree at the admission stage itself. The learned counsel further submitted that when the question of limitation was not dealt with by the lower appellate court, the lower appellate court should have reviewed the judgment and decree and thereafter should have recalled the same and thereafter a fresh judgment and decree should have been passed but the court below in review application has held that there is no question of limitation and has wrongly dismissed the review application. Learned counsel for the petitioner submitted that no point was formulated by the lower appellate court on the point of limitation although it was raised specifically in the memo of appeal. Further learned counsel for the petitioner submitted that the trial court although framed the issue on limitation but decide the same perfunctorily, as such, it was incumbent on the lower appellate court to have dealt with the issue of limitation but in the judgment it was not dealt with, which necessitated the petitioner to file a review application under Order 47 Rule 1 C.P.C., which was

registered as Miscellaneous Case No. 02 of 2015.

5. It is admitted fact that the trial court decreed the plaintiff's suit. The question of limitation decided against the petitioner. The appeal was filed. Before the appellate court, the question of limitation was also raised. The court below in the impugned judgment did not decide this question of limitation but has dismissed the title appeal. Now, the question is because the lower appellate court has not touched this issue regarding the limitation, can it be said that it is an error apparent on the face of the record so as to call for review under Order 47 Rule 1 C.P.C. So far this question is concerned, it may be mentioned here that this question purely relates to the merit of the case. If it is raised by the petitioner, in fact, in memo of appeal, it was not considered by the lower appellate court, it means that the court below did not think that it is necessary to decide the same issue or that before the lower appellant court, this question of limitation was not argued. There is no averment in this civil miscellaneous application that at the time of argument, this question of limitation was specifically argued and the lower appellate court has not decided this issue although it was argued. Moreover, it cannot be said to be an error apparent on the face of the record. At best, it can be said that an issue, which was raised in the memo of appeal, has not been

decided. Further from perusal of the impugned order, it appears that in the review application, the court below has recorded clear finding that there is no question of limitation arises in the facts and circumstances of the case. Therefore, what was not decided in the appeal that has been decided in review application.

6. The Hon'ble Supreme Court in the case of ***Kamlesh Verma Vs. Mayawati reported in AIR 2013 SCC 3301*** has held that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self evident and has to be dictated by process of reasoning can hardly be and said to be an error apparent on the face of the record justifying the court to exercise its power of review.

7. In view of the above settled preposition of law, it cannot be said that if an issue has not been decided which according to the lower appellate court as has been held in the review order that there is no scope of limitation, it would be said that it is an error apparent on the face of the record. At best, it is an issue which could have been raised by the petitioner before the higher court in appeal. Here the judgment of lower appellate court is not under challenge. How this court will examine the judgment and record finding error apparent on the face of record and unless

it is recorded how this Court will direct the court below to review the judgment and decree? So far the submission of the learned counsel that at the admission stage itself it has been dismissed is concerned, it can be said that there is no hard and fast rule that unless the review application is admitted, it cannot be decided.

8. In my opinion, therefore, this Court cannot direct the lower appellate court to review the judgment. Thus, In find no reason to interfere with the impugned order. Accordingly, this civil miscellaneous application is dismissed.

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(Mungeshwar Sahoo, J)