

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.437 of 2016

IN

LPA 466 of 2012

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Md. Alimuiddin S/O Sheikh Ismail, resident of Kakaijan, P.S. K.Nagar, District-Purnea.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Water Resources, Govt. of Bihar, Patna.
3. The Deputy Secretary, Department of Water Resources, Govt. of Bihar, Patna.
4. The Chief Engineer, Water Resources Department, Birpur, Supaul.
5. The Executive Engineer, Rupankan Pramandal, Water Resources Department, Birpur, Supaul.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajendra Nath Jha, Advocate.
Mr. Navjot Yesu, Advocate.

For the Respondents : Mr. Brajesh Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date: 22-03-2017

I.A. No. 9484 of 2016

For the reasons stated in the interlocutory application, we are satisfied that the petitioner has made out good grounds for condonation of delay of about 2 years and 18 days in preferring the review application.

2. In that view of the matter, the delay caused in filing the review application is condoned.

3. Interlocutory application stands allowed.



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4. Heard Mr. Rajendra Nath Jha, learned counsel for the petitioner and Mr. Brajesh Kumar, learned counsel for the State.

5. This application under Section 114 of the Code of Civil Procedure has been preferred by the petitioner for review the judgment and order dated 11/12.8.2014 passed in LPA No. 466 of 2012 preferred by the State of Bihar against the order dated 20th of October, 2011 passed by the learned Single Judge in C.W.J.C. No. 9663 of 2010.

6. At the outset, it is relevant to note that against the order under review the petitioner had preferred Special Leave to Appeal before the Supreme Court vide S.L.A.(c) No. 24160 of 2016 which was dismissed vide order dated 30.08.2016.

7. Mr. Rajendra Nath, learned counsel for the petitioner has taken us through the minutes detail of the order passed by the Division Bench in Letters Patent Appeal. He has referred to sufficient documents annexed to the writ petition in order to establish his case as there is an error apparent on the face of the record.

8. However, upon examination of the record, we find that the findings recorded by the Division Bench are based on



the record of the case. However, in order to satisfy ourselves, we have examined the materials available on record. We find that the judgment under review was passed on the basis of the materials available on record.

9. It is well settled that review proceeding cannot be equated with the original hearing of the case. A party is not entitled to seek review of a judgment merely for the purpose of re-hearing and fresh decision of the case.

10. In ***Col. Avtar Singh Sekhon v. Union of India, [1980 Supp SCC 562]***, the Supreme Court held in paragraph 12 as under:-

“12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In *Sow Chandra Kante v. Sheikh Habib*, (1975) 1 SCC 674, this Court observed : (SCC p. 675, para 1)

“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.... The present stage is not



a virgin ground but review of an earlier order which has the normal feature of finality.”

11. The scope of Order XLVII Rule 1 of the Code of Civil Procedure, dealing with review of a judgment, has been succinctly stated by the Supreme Court in ***Parsion Devi v. Sumitri Devi [(1997) 8 SCC 715]***, in paragraph 7, held as under :-

“7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. v. Govt. of A.P.* (1964) 5 SCR 174 (SCR at p. 186) this Court opined:

“What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an ‘error apparent on the face of the record’). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an ‘error apparent on the face of the record’, for there is a distinction which is real, though it might not always be capable of exposition, between a



mere erroneous decision and a decision which could be characterised as vitiated by ‘error apparent’. *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.”*

12. In the light of the settled legal position as discussed above, having gone through the present review application, we find that no error apparent on the face of the record has been brought out by the review petitioner warranting review of the order dated 11.08.2014/12.08.2014. A perusal of the review application would make it evident that the same is nothing, but an appeal in disguise.

13. In view of the above discussions, the present review application is dismissed.

(Ashwani Kumar Singh, J)

(Vikash Jain, J)

Md. Ibrarul/-

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