

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No.1018 of 2015**

1. South Eastern Coalfields Limited Through The Chairman Cum Managing Director, Seepat Road, Bilaspur Chhattisgarh
2. South Eastern Coalfields Limited, Through The Chief Engineer, Seepat Road, Bilaspur Chhattisgarh

---- Petitioners

Versus

Muralidhar And Company A Registered Partnership Firm Having Its Office At Super Market Sita Bardi, Nagpur, Through Its Partner Shri Muralidhar Vithaldas Maheshwari, Aged About 65 Years, Occupation Business, R/o Wardha Road, Nagpur, Maharashtra

---- Respondent

For Petitioners	:	Dr.N.K.Shukla, Senior Advocate with Mr.O.P.Agrawal, Advocate
For Respondent	:	Mr.Somnath Verma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****31/7/2017**

1. The trial Court passed judgment and decree in favour of the respondent/plaintiff in Civil Suit No.53-B/2002 on 24.9.2014 granting money decree in favour of the respondent/deGREE holder. That decree was not challenged by the SECL in appeal and that decree has attained finality, thereafter the petitioner-SECL filed an application under Order 47 Rule 1 of the Code of Civil Procedure before the trial Court for reviewing the judgment and decree dated 24.9.2014. The trial Court by the impugned order has rejected the application finding no merit, against which, this writ petition under Article 227 of the Constitution of India has

been filed.

2. Dr.N.K.Shukla, learned Senior Counsel appearing for the petitioners would submit that the trial Court has committed jurisdictional error in rejecting the review application.
3. On the other hand, Mr.Somnath Verma, learned counsel appearing for the respondent would support the impugned order.
4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
5. At this stage, it would be appropriate to notice the provisions contained in Order 47 Rule 1 of the CPC which provides for review of judgment which states as under:-

“1. Application for review of judgment.- (1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(C) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation : The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.”

6. In order to consider the plea raised at the Bar, it would be apposite to notice relevant judgment of the Supreme Court delineating the scope of review enumerated in Order 47 Rule 1 of the CPC.

6.1) In the matter of Devaraju Pillai Vs. Sellayya Pillai¹ the Supreme Court has held as under :-

“1..... It the party was aggrieved by the judgment of the learned Single Judge sitting in second appeal the appropriate remedy for the party was to file an appeal against the judgment of the learned Single Judge. A remedy by way of an application for review was entirely misconceived and we are sorry to say that the learned Single Judge who entertained the application totally exceeded his jurisdiction in allowing the review and upsetting the judgment of the learned Single Judge, merely because he took a different view on a construction of the document.....”

6.2) Similar is the proposition of law laid down by the Supreme Court in the matter of Meera Bhanja (Smt) Vs. Nirmala Kumari Choudhury (Smt)², in which Their Lordships of the Supreme Court have clearly held that scope of review must be confined to error apparent on the face of record and review proceedings are not by way of an appeal. It was observed as under:-

“8. It is well-settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with, the limitation of the powers of the

1 (1987) 1 SCC 61

2 (1995) 1 SCC 170

Court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma and Ors.**³, speaking through Chinnappa Reddy, J., has made the following pertinent observations :

It is true there is nothing in Article 226 of the Constitution to preclude the 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 any analogous ground. But, it may not 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 power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.”

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of **Satyanarayan Laxmi Narayan Hegde and Ors. v. Mallikarjun Bhavanappa Tirumale**⁴, wherein K.C. Das Gupta, J., speaking for the Court

³ (1979) 4 SCC 389

⁴ AIR 1963 SC 1909

has made the following observations in connection with an error apparent on the face of the record:

“An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the power of the superior Court to issue such a writ.”

10. In the light of this settled legal position let us try to see whether in the present case the latter Division Bench while dealing with the review petition had overstepped the limits of jurisdiction under Order 47, Rule 1, and whether it had resorted to re-appreciation of evidence by almost sitting in appeal over the decision reached by the earlier Division Bench.”

6.3) In the matter of Avijit Tea Co. Pvt. Ltd. Vs. Terai Tea Co. and others⁵ where the suit for specific performance of contract was refused but decree for refund of earnest money was granted, review was sought of order granting refund, delineating the scope of review jurisdiction the Supreme Court has held that decree granted for refund whatsoever demerits therein was only correctable in appeal and review of such decree was not warranted in law.

6.4) Similarly, in the matter of Lily Thomas Vs. Union of India and others⁶ the Supreme Court has again considered the provisions of Order 47 Rule 1 of the CPC and held that review jurisdiction can be exercised only for correction of mistake and not to substitute views. It was observed as under:-

5 (1996) 10 SCC 174

6 AIR 2000 SC 1650

“52. The dictionary meaning of the word "review" is "the act of looking; offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakersh and Ors. v. Pradyunman singh ji Arjun singh ji* held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of Justice. Law has to bend before Justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in *S. Nagaraj and Ors etc. v. State of Karnataka and Anr. etc.*⁷ held:

“Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Law Choudhury v. Sukhraj Rai*, AIR 1941 FC 1 the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* (1836) 1 Moo PC 117 that an order made by the Court was final and could not be altered.

“...nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power

⁷ 1993 Supp (4) SCC 595

which the Courts of record and statute have of rectifying the mistakes which have crept in....The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies. Basis for exercise of the power was stated in the same decision as under:

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And Clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XL VII Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.”

55. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated 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 of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.”

6.5) In the matter of Akhilesh Yadav Vs. Vishwanath Chaturvedi and others⁸, the Supreme Court has clearly held that review jurisdiction is restricted to the confines of the principles enunciated in Order 47 of the Code of Civil Procedure. It was observed as under:-

“.....The review petitions are ordinarily restricted to the confines of the principles enunciated in Order 47 of the Code of Civil Procedure, but in this case, we gave counsel for the parties ample opportunity to satisfy us that the judgment and order under review suffered from any error apparent on the face of the record and that permitting the order to stand would occasion a failure of justice or that the judgment suffered from some material irregularity which required correction in review. The scope of a review petition is very limited and the submissions advanced were made mainly on questions of fact. As has been repeatedly indicated by this Court, review of a judgment on account of some mistake or error apparent on the face of the record is permissible, but an error apparent on the face of the

record has to be decided on the facts of each case as an erroneous decision by itself does not warrant a review of each decision.....”

6.6) Very recently in the matter of **Sasi (D) Through Lrs. Vs. Aravindakshan Nari and Others** (SLP (Civil) No.(CC 4339/2017), decided on 3.3.2017 the Supreme Court noticing its earlier pronouncement reported in the matter of **Parsion Devi Vs. Sumitri Devi**⁹, dealing with scope and ambit of Order 47 Rule 1 CPC held as under:-

“6. The grounds enumerated therein are specific. The principles for interference in exercise of review jurisdiction are well settled. The Court passing the order is entitled to review the order, if any of the grounds specified in the aforesaid provision are satisfied.

9. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to be self-evident and is not to be found out by a process of reasoning. We have adverted to the aforesaid aspects only to highlight the nature of review proceedings.”

7. The judgment and decree was passed in substantive civil suit. That order was not challenged by the SECL in appeal or no application for setting aside the ex-parte judgment and decree was filed and allowed the decree to become final and straightway filed an application for review. The trial Court has clearly recorded a finding that no ground is available to the SECL for review of the earlier order. The trial Court has clearly recorded a finding that there is no ground

9 (1997) 8 SCC 715

for reviewing of the order dated 24.9.2014 on merits and there is no error apparent on the face of record. The petitioner cannot be allowed to challenge the decree on merits in review petition. The said finding is neither perverse nor contrary to record. The trial Court is justified in holding that there is no error apparent on the face of record.

8. Accordingly, the writ petition deserves to be and is hereby dismissed with cost of Rs.5000/- to the respondent/plaintiff.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-