

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on: 02.03.2017

Order delivered on: 17.03.2017

Review Petition No.96 of 2013

1. Shri Praveen Jain S/o Shri Ashkaran Jain, Aged 51 years, Major, Occu.-Trader, R/o-Tagore Nagar, P.S. Tikapara, P.O. Dayanand Nagar, Raipur, Tah. & Distt.-Raipur (CG)
2. Shri Dilip Jain S/o Shri Ashkaran Jain, Aged : Major, Occu.-Trader, R/o-Tagore Nagar, P.S. Tikapara, P.O. Dayanand Nagar, Raipur, Tah. & Distt.-Raipur (CG)

----Appellants

Versus

1. K. Srinivas, son of Late K. Appa Rao, aged about 35 years
2. K. Manmohan Rao, son of Late K. Appa Rao, aged about 32 years

Both residents of D-87, Tagore Nagar, Police Station Tikrapara, Raipur (CG)

---- Respondents

For Appellants	:	Mr.Sameer Oraon, Advocate
For Respondents	:	Mr.H.S.Patel, Advocate

Hon'ble Shri Pritinker Diwaker, Acting Chief Justice

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V.Order

Sanjay K. Agrawal, J.

1. Seeking review under Order 47 Rule 1 of the Code of Civil Procedure (hereinafter called as 'CPC') of the judgment and decree dated 16.10.2012 passed in First Appeal No.192 of 2005 in the matter of K. Appa Rao Vs. Praveen Jain and another, this review

petition has been filed by the appellants who are the legal representatives of deceased original plaintiff Smt.Leela Devi.

2. The Essential facts requisite to adjudicate the plea raised in the review petition are as under:-

(i) Original plaintiff-Smt.Leela Devi Jain filed a suit against original defendant-K. Appa Rao for specific performance of the suit house i.e. D-71 (new number D-81) , Tagore Nagar, Raipur stating inter-alia that an agreement was executed between original plaintiff-Smt.Leela Devi Jain and original defendant-K.Appa Rao. Suit was filed by plaintiff-Smt.Leela Devi Jain through power of attorney holder his son Praveen Chand Jain.

(ii) The trial Court by its judgment and decree dated 25.3.2004 decreed the suit in favour of the plaintiff and directed defendant-K. Appa Rao to execute the sale deed of the suit house in favour of the plaintiff.

(iii) Questioning the judgment and decree passed by the trial Court, defendant-K. Appa Rao preferred first appeal being First Appeal No.192 of 2005 before this Court. The Division Bench of this Court vide judgment dated 16.10.2012 did not affirm the decree for specific performance of the contract granted by the trial Court and modified the decree of the trial Court granting decree for refund of money of ₹ 1,20,000/-

with interest @ 6% per annum to the appellants/review petitioners herein.

(iv) Being aggrieved and dissatisfied with the judgment passed in the first appeal, the present appellants, legal representatives of original plaintiff-Smt. Leela Devi Jain, preferred SLP (Civil) (CC) No.9096/2013. In that petition, on 29.4.2013, the Supreme Court was pleased to pass the following order:-

“Mr. C.U. Singh, learned senior counsel appearing for the petitioners submits that the submissions with regard to part performance and effect thereof as well as some other points have not been noticed by the High Court. If that be so, the remedy of the petitioners shall be before the High Court by way of review petition and not by way of special leave petition in this Court.

In view of the aforesaid, learned senior counsel makes a prayer to withdraw the special leave petition with liberty to approach the High Court. The same is, accordingly, dismissed as withdrawn, with liberty to approach the High Court.”

(v) Thus the review petitioners withdrawn the SLP with liberty to file review petition before this Court. Thereafter, the present review petition has been filed on 11.6.2013 seeking review of the judgment and decree passed by this Court. In the review petition runs into 15 pages and number of grounds have been raised to demonstrate the error apparent on the face of record.

2. Mr. Sameer Oraon, learned counsel appearing for the appellants, would submit that there is an error apparent on the face of record in

the judgment under review and therefore, the judgment and decree be reviewed as error is apparent and the plaintiff's suit be allowed in toto rather decree passed by the trial Court be restored.

3. Mr.H.S.Patel, learned counsel appearing for the respondents, would submit that scope of review jurisdiction is extremely limited and only an error on the face of record can be corrected in the said jurisdiction and re-appraisal/re-appreciation of evidence cannot be done in exercise of said jurisdiction as that would amount to exercise of appellate jurisdiction, which is impermissible in law.
4. We have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the record with utmost circumspection.
5. The trial Court decreed the suit of plaintiff Smt.Leela Devi Jain and granted specific performance of the contract in favour of the plaintiff. In the First Appeal preferred by the defendant, this Court considered the submissions of the parties and recorded a key finding in para 7 of the judgment under review which states as under:-

“7. As per agreement Ex.P/1, appellant has entered into agreement to sale the house property to respondent on consideration of Rs.3,25,000/- and he received advance of Rs.1,00,000/- by cheque. Respondents examined AW/1 Praveen Jain. As per his evidence, he was present at the time of execution of agreement Ex.P/1 in which both the parties signed. Respondent/appellant handed over the possession of the house property and other agreement Ex.P/2 was got prepared by between parties. In para 6 of his deposition he has specifically admitted that his mother has

entered into an agreement with appellant/defendant and certain conditions were decided before preparation of the agreement, but as per evidence of DW/1-the appellant, he has taken loan from Praveen Jain. He has never seen respondent and has not entered into an agreement with respondent. He does not know Hindi. Agreement was signed at the instance of Parveen Jain. He examined DW/2 Shri K. Srinivasa Rao, who is his son in his support. Plaintiff examined PW/2 Doctor Ajay Mohan Sai, who has deposed that the appellant executed an agreement in favour of respondent and he has witnessed that agreement. Specific allegation relating to letter has been made and deposed by the appellant that he had never seen respondent/plaintiff. He has never entered into agreement with the respondent. Respondent had not examined herself. As per evidence of PW/1 Praveen Jain, respondent has entered into an agreement. In absence of any admission by the appellant relating to execution of the agreement between appellant and respondent, respondent/plaintiff was under obligation to prove the pleading. In absence of such proof, it would be difficult to hold that appellant has entered into an agreement to sale the house property in which he is residing and possession thereof was handed over to the respondent. As per agreement, he has taken advance of Rs.1,00,000/- and thereafter Rs.20,000/- whereby he has received a total amount of Rs.1,20,000/-. In absence of evidence of respondent by decreeing the suit for specific performance, the court below has committed an illegality by arriving at finding that respondent has proved the factum of agreement and her readiness and willingness.”

6. 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.”

7. 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.

7.1) 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

¹ (1987) 1 SCC 61

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.....”

7.2) 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 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 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

² (1995) 1 SCC 170

³ (1979) 4 SCC 389

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 Tirumale⁴, wherein K.C. Das Gupta, J., speaking for the Court 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 over-stepped 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.”

7.3) 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

⁴ AIR 1963 SC 1909

⁵ (1996) 10 SCC 174

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.

7.4) 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:-

“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

⁶ AIR 2000 SC 1650

⁷ 1993 Supp (4) SCC 595

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 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.”

7.5) 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.....”

7.6) 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 Devi⁹, 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

⁸ (2013) 2 SCC 1

⁹ (1997) 8 SCC 715

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.”

8. Noticing the scope and ambit of review jurisdiction available under Order 47 Rule 1 of the CPC would bring us to consider whether there is an error apparent on the face of record in the judgment under review to invoke the provisions contained in Order 47 Rule 1 of the CPC. The review petitioners have filed the review petition running into fifteen pages. However, in the written submission filed after hearing of review petition the review petitioners have finally raised following grounds holding it be an error apparent on the face of record which are as under:-

(1) That the Respondent/K. Appa Rao/Seller accepted in his written statement that he sign and executed both the agreement dated 24/09/1998 and 24/12/1998, thus, entire factum of agreement are admitted. Receipt of ₹1,50,000/- has been admitted and also receipt of ₹ 20,000/- thus admitted that he received total amount of ₹1,70,000/- for which a separate permission fee for No Objection Certificated from Raipur Development Authority has also been paid by the Applicant/Praveen Jain/Purchaser in furtherance of the agreement. But with all due respect to the order passed by Hon'ble Court held that-in absence of any admission by the respondent relating to the agreement between appellant and respondent it would be difficult to hold that respondent entered into an agreement to sale.

2. That the respondent acted something in furtherance of the each payment in consonance with the terms of the agreement. That after the 1st

agreement dated 25/09/1998 was executed, he applied for no objection certificate from Raipur Development Authority, after the 2nd agreement dated 24/12/98, possession of half portion of the house was delivered the present applicant and finally on 18/01/1999 receipt of ₹ 20,000/- was endorsed on the agreement itself and the signature is admitted by the respondent. Further NOC vide letter dated 11/11/1998 conditionally permitted the respondent to transfer the suit property. Thus aforesaid permission further established that the agreement to sale was meant to be acted upon but has been ignored hence error apparent on the face of the record been established.

3. That the Leela Devi mother of the applicant was so weak and not keeping well so she executed a special power of attorney in favour of the present applicant No.1 to initiate legal action against the respondent. The plaintiff leela devi didn't examined herself but power of attorney holder praveen jain as the person involving personal knowledge examined himself. Present applicant Praveen Jain completely managed, transacted and looked after all the affair of the plaintiffs attorney who happens to be son of the plaintiff. In such circumstances it may be possible to accept the evidence of such attorney even with reference to bona fide or "readiness and willingness".

4. That Hon'ble Apex Court in **Man Kaur (Dead) By LRS. Vs. Harat Singh Sangha (2010) 10 SCC 512 (relevant para 15 and 18)** summarized with regard to legal position as to who should give evidence in regard to matters involving personal knowledge.

Emphasis Supplied - "Para 18 (g).....there is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member). It may be possible to accept the evidence of such attorney even with reference to bona fide or readiness and willingness." Example.....a son/daughter exclusively managing the affairs of an old and infirm parent.."
Copy is annexed as Annexure A-3.

9. A careful perusal of the grounds set-out above by the review petitioners would clearly show that following are the principal grounds on which review petitioners seek review of the judgment :-

(1) That, original defendant-K. Appa Rao accepted/admitted execution of two agreements and receipt of ₹ 1,70,000/-, whereas the judgment under review recorded a finding contrary to the admission so made in the written statement.

(2) The defendant thereafter obtained No Objection Certificate from RDA to transfer the suit property, which has established that the agreement to sale was meant to be acted upon which has been ignored by this Court in the judgment under review.

(3) Non-examination of the plaintiff (Leela Devi) before the trial Court was justified in the facts of the case.

10. A perusal of the judgment under review would show that in para 6 this Court has noted the submissions of the review petitioners that the defendant had admitted the execution of agreement to sale and therefore, heavy burden lies on the defendant to rebut the same, and thereafter the judgment under review clearly recorded a finding after appreciating the evidence on record that there is no admission of agreement by defendant-K. Appa Rao with that of original plaintiff-Smt.Leela Devi Jain and it has further been held that the plaintiff has failed to establish the execution of agreement to sale with the defendant. Likewise the judgment under review in the light of facts of the case found that the plaintiff

has failed to prove the fact of execution of agreement to sale with the defendant as she was not examined before the trial Court and modified the decree for specific performance of contract passed by the trial Court into decree for refund of earnest money.

11. In our considered opinion, the judgment under review has considered the submission of the review petitioner/plaintiff on merits and has come to specific conclusion that the plaintiff has failed to prove the execution of agreement with the defendant and also categorically stated that examination of the plaintiff herself before the trial Court was absolutely necessary. Thus, all these findings are finding on merits of the case after refuting the submission of the plaintiff upon due consideration and appreciation of oral and documentary evidence available on record taking a possible view of the matter and merely on the ground that other view is also possible and finding so recorded in the judgment under review according to the plaintiff has de-merit warranting interference is no ground to substitute the view over the reasoning recorded and hold that the judgment under review suffers from an error apparent on record particularly in the light of provisions contained in Order 47 Rule 1 CPC and principles of law laid down in above-mentioned judgments of the Supreme Court specifically in the matter of **Avijit Tea Co. Pvt. Ltd.** (supra) and same is not correctable in review jurisdiction.

12. Accordingly, we do not find any error apparent on face of record in the judgment under review. We hereby decline to exercise the review jurisdiction under Order 47 Rule 1 of the CPC and accordingly dismiss the review petition leaving the parties to bear their own cost(s).

Sd/-
(Pritinker Diwaker)
Ag.Chief Justice

Sd/-
(Sanjay K.Agrawal)
Judge

Bablu