

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION (L) NO. 5 OF 2017
IN
WRIT PETITION NO. 1355 OF 2014

Radhakrishna Co-operative	}	
Housing Society Limited	}	
and Anr.	}	Petitioners
versus		
State of Maharashtra	}	
and Ors.	}	Respondents

Mr. Prateek Seksaria with Ms. Kausar Banatwala, Ms. Flora Jain i/b. Mr. Tushar Goradia for the petitioners.

Ms. Aparna Murlidharan i/b. Mr. P. G. Lad for respondent nos. 2 to 4.

Mr. H. C. Pimple for respondent no. 5.

Mr. Raju Morey with Mr. Sagar Rane for respondent no. 6.

CORAM :- S. C. DHARMADHIKARI &
M. S. SONAK, JJ.

DATED :- OCTOBER 5, 2017

P.C. :-

1. After condoning the delay, by consent, this review petition is taken up for admission.

2. It is most unfortunate and we must bring this to the notice of all concerned that routinely, review petitions are filed in this court, after the orders under review are unsuccessfully

challenged before the higher court but liberty is sought to present a review petition. The higher court, with greatest respect, is informed that certain points or arguments, allegedly crucial to the case and going to the root of the matter were either not canvassed or canvassed but not considered. Such an argument is raised before the Hon'ble Supreme Court of India at the instance of the aggrieved parties by a counsel instructed by an advocate who had no opportunity to argue the matter before this court. After the Hon'ble Supreme Court is persuaded to grant liberty to file a review petition, invariably such review petitions are filed and argued by the parties through different set of advocates and who were not on record or engaged to argue when the orders under review are passed. This set of advocates present the review petition and seek to re-argue the matter by relying on the liberty granted by the Hon'ble Supreme Court of India. That argument, according to the counsel and in terms of the Hon'ble Supreme Court's liberty, permits us to go behind the order under review as if we are exercising appellate or revisional jurisdiction. If something that allegedly goes to the root of the case has not been considered, but which would entail a detailed inquiry and virtual re-hearing of the matter, is a permissible exercise is the submission and essentially based on the Hon'ble Supreme Court's order. With respect, it is urged that such order would then define

the ambit of our power of review. This only means that we must disregard the legal parameters of review jurisdiction and its limited nature. The statutory scheme as far as review is concerned is then overridden and enables the parties to take chances again and again. Surely, that is not the purpose of review jurisdiction.

3. In this case, precisely that is attempted and Mr. Prateek Seksaria would submit that the Hon'ble Supreme Court, having noted the contention of the above nature that we should consider this review petition on merits.

4. The order under review has been carefully perused by us and equally the order of the Hon'ble Supreme Court of India. The order of the Hon'ble Supreme Court itself proceeds on the basis that the submissions noted by it have not been canvassed before the High Court and therefore, they were not dealt with. With greatest respect, para 12 at pages 11-12 of the writ petition memo is relied upon and which para itself would indicate that the very petitioners, who had approached this court earlier, pleaded in this para that no purpose was served by acquiring the property as the respondents have failed to offer any amicable solutions to the tenants/occupants on account of lack of funds. Moreover, in view of the order passed by the Hon'ble Supreme Court, in the

property owners cases challenging the constitutional validity of Chapter VIIIA of the Maharashtra Housing and Area Development Act, 1976, the said property could not be conveyed in favour of petitioner no. 1 and it is impossible for the tenants/occupants, in view of the dangerous condition of the building to reside there. It is in these circumstances that the further pleading in this para is that though the petitioner moved the acquisition proposal, but in view of the dispute with the landlord and the larger challenge, namely, to the constitutional validity of Chapter VIIIA pending in the Hon'ble Supreme Court, no further steps could be taken. It is stated in this paragraph that at present the landlord and the petitioner have arrived at an amicable settlement, whereby the property can be redeveloped and the proposal for acquisition made in the year 1990 can be recalled and cancelled. Paras 11 and 12 of the writ petition read as under:-

11. The Petitioners state that Petitioner No. 2 is now the owner of the property. The Petitioner No. 1 is the society formed by the tenants/occupants of the said building and the Petitioner No. 2 is the landlord of the property and as such, both the Petitioners have decided to redevelop the said property by demolishing the old and dilapidated structure and to construct a new building thereon. The Petitioners therefore submit that it is just and necessary that Petitioners be allowed to redevelop the property in view of the settlement arrived at between them though the said property was acquired under Chapter 8A of MHADA Act for the purpose of redevelopment.

12. The Petitioners state that since the said property was acquired under Chapter 8A of the MHADA Act, the Petitioners are not in a position to redevelop the said property under Development Control Regulation 33(7) r/w Appendix III. The Petitioners state that no purpose was served by acquiring the said property as the Respondents have failed to offer any amicable solutions to the tenants/occupants on account of lack of funds. However, in view of the order passed by the Hon'ble Supreme Court, the said property could not be conveyed in favour of the Petitioner No. 1 and it is impossible for the tenants/occupants of the said building in view of dangerous condition of the building. The Petitioners submit that originally the acquisition proposal was moved by the Petitioner No. 1 in view of the dispute with landlord of the property. However, at present, the landlord and the Petitioner No. 1 have arrived at an amicable settlement whereby the said property can be redeveloped and proposal for acquisition made in the year 2013 requires to be recalled and cancelled. The Petitioners submit that the entire purpose of Chapter 8A could not be fulfilled although the said property was acquired and as such, it is necessary to release the said property from the acquisition.

(Underlining is ours)

5. We are of the clear view that bearing in mind the legal status of the review petitioners, the counsel appearing for the petitioners at the initial stage and when the order under review was passed, did not deem it fit and proper to canvass any submissions based on these pleadings. The counsel clearly proceeded on the footing, as noted in the order under review, that there was an earlier petition filed by respondent no. 6 and that petition was dismissed by a detailed order. After that, the only contention raised was that the legality and validity of the entire Chapter being an issue raised before the Hon'ble Supreme Court of India and pending consideration, the plight of the occupants

should be considered by this court. They be allowed to reconstruct the building or redevelop the property so that those presently housed in a dilapidated structure, which is highly unsafe would get a decent accommodation. Such an argument was specifically dealt with and rejected.

6. In the garb of the petitioners' interpretation of the Hon'ble Supreme Court order in this case, we cannot violate and bypass the Code of Civil Procedure, 1908, particularly section 114 read with Order XLVII Rule 1 thereof and reopen our final conclusions. It is but another facet of the same submission or argument raised before this court, which is canvassed before the Hon'ble Supreme Court of India but without inviting the attention of the Hon'ble Supreme Court to the above pleadings. In such circumstances, we are not persuaded to review our order on the basis of the petitioners' understanding of the Hon'ble Supreme Court's order which we reproduce hereinbelow:-

“UPON hearing the counsel the Court made the following

ORDER

Delay condoned.

It is submitted by Mr. Chander Uday Singh, learned senior counsel being assisted by Mr. Tushar Goradia and Mr. Pratap Venugopal, learned counsel for the petitioners that the High Court has misconstrued the prayer made by the petitioner, inasmuch as the prayer of the petitioner No.1, Radhakrishna Co-operative Housing Society Limited, was to permit it to withdraw from acquisition and get the

land developed by the land owner, the petitioner No. 2 herein. Learned senior counsel would submit that the High Court in certain judgments regard being had to the facts and circumstances has permitted withdrawal from acquisition. It is contended that once the withdrawal is permitted, the land owner can develop the land for the benefits of the members of the Society as agreed to between the Society and the land owner.

At this juncture, we are obligated to say that the aforesaid submissions have not been canvassed before the High Court and, therefore, the High Court has not dealt with the same. However, keeping in view the submissions put forth and the benefit of the members of the Society being highlighted, we permit the petitioners to file an application for review before the High Court within four weeks hence. If the application for review is filed within the said period, the High Court shall dispose of the same on its own merits keeping in view the submissions recorded herein-above and other submissions to be put forth in the review petition without throwing it on the ground of limitation at the threshold. In case the review petition is not entertained by the High Court and, eventually, dismissed, liberty is granted to the petitioner to approach this court in the special leave petition assailing the principal order (the impugned order) as well as the order passed in review.

With the aforesaid observation, the special leave petition stands disposed of.”

7. The order passed by the Hon'ble Supreme Court of India does not direct us to grant a review, but only to consider the present petition without throwing it out on the ground of limitation at the threshold. We have considered it, but entertaining the submissions noted in the Hon'ble Supreme Court order would mean going behind the order under review, reconsidering the same materials based on which that was passed at a re-hearing of the writ petition.

8. The same pleas could have been raised but the counsel appearing for the petitioners then realised that it would not be permissible to raise them. The owner (added original respondent no. 6 to the writ petition) was the legal entity from whom the property was acquired by the respondent nos. 1 to 3. The respondent no. 6 was divested of its right and title in the property way back in the year 1992. The challenge to the acquisition raised by respondent no. 6 vide Writ Petition No. 1474 of 2007 failed by virtue of this court's order therein dated 7th December, 2007 as noted in the order under review. Hence, in the initial round, the petitioners did not raise the contentions now sought to be canvassed. Now, as an afterthought and relying on the above reproduced order they are canvassed. A consideration of that is equivalent to exercising appellate jurisdiction or revisional power, both of which are ruled out in review jurisdiction. We do not think that the exercise, as is now suggested and based on the petitioners' interpretation of the Hon'ble Supreme Court order, is legally permissible. In the case of *Kamlesh Verma vs. Mayawati and Ors.*¹ the Hon'ble Supreme Court held as under:-

“6. Order XLVII, Rule 1(1) of the Code of Civil Procedure, 1908, provides for an application for review which reads as under:

“Any person considering himself aggrieved-

¹ AIR 2013 SC 3301

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”

.....

8. This court has repeatedly held in various judgments 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. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient. This Court, in *Sow Chandra Kante & Anr. v. Sheikh Habbib* (1975) 1 SCC 674: (AIR 1975 SC 1500), held as under:

“1. Mr. Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to a re-hearing. May be, we were not right in refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained. 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. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for

compliance with these factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use. We regret to say that this case is typical of the unfortunate but frequent phenomenon of repeat performance with the review label as passport. Nothing which we did not hear then has been heard now, except a couple of rulings on points earlier put forward. May be, as counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality."

(Underlining is ours)

9. In a criminal proceeding, review is permissible on the ground of an error apparent on the face of the record. A review proceeding cannot be equated with the original hearing of the case. In *M/s. Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*, (1980) 2 SCC 167: (AIR 1980 SC 674), this Court, paragraph Nos. 8 & 9 held as under:

"8. It is well-settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so: *Sajjan Singh v. State of Rajasthan*: (AIR 1965 SC 845). For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: *G. L. Gupta v. D. N. Mehta* (AIR 1971 SC 2162). The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: *O. N. Mohindroo v. Distt Judge, Delhi* (AIR 1971 SC 107). Power to review its judgment has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an

application for review is entertained only on a ground mentioned in Order 47, Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record (Order 40, Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceedings, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except “where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility” Sow; Chandra Kante v. Sheikh Habib (AIR 1975 SC 1500)

9. Now, besides the fact that most of the legal material so assiduously collected and placed before us by the learned Additional Solicitor General, who has now been entrusted to appear for the respondent, was never brought to our attention when the appeals were heard, we may also examine whether the judgment suffers from an error apparent on the face of the record. Such an error exists if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record.”

10. Review of the earlier order cannot be done unless the court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. This Court, in Col. Avtar Singh Sekhon v. Union of India & Ors. 1980 (Supp) SCC 562: (AIR 1980 SC 2041) held 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 (AIR 1975 SC 1500) this Court observed:

“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. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. This Court, in *Parsion Devi & Ors. v. Sumitri Devi & Ors.*, (1997) 8 SCC 715, 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.* (AIR 1964 SC 1372) this Court opined:

“What, however, we are nor 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.”(emphasis ours)

8. Again, in *Meera Bhanja v. Nirmala Kumari Choudhury* (AIR 1995 SC 455) while quoting with approval a passage from *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (AIR 1979 SC 1047) this Court once again held that 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.

9. Under Order 47, Rule 1, CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on

the face of the record justifying the court to exercise its power of review under Order 47, Rule 1, CPC. In exercise of the jurisdiction under Order 47, Rule 1, CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.

12. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. This Court, in *Lily Thomas & Ors. v. Union of India & Ors.*, (2000) 6 SCC 224: (AIR 2000 SC 1650), held as under:

“54. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the grounds specified in Order 47, Rule 1 of the Code of Civil Procedure which provides:

“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.”

Under Order XL, Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order XL, Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same manner.

56. It follows, therefore, that the power of review can be exercised for correction of a mistake but 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 like 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 co-ordinated 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.

58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in Sarla Mudgal case, (1995) 3 SCC 635 : (AIR 1995 SC 1531). It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment in Sarla Mudgal case. We have also not found any mistake or error apparent on the face of the record requiring a review. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment

interpreting Section 494 amounted to violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the judgment. The words “any other sufficient reason appearing in Order 47, Rule 1, CPC” must mean “a reason sufficient on grounds at least analogous to those specified in the rule” as was held in *Chhajju Ram v. Neki*, AIR 1922 PC 112 and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius*, AIR 1954 SC 526. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In *T. C. Basappa v. T. Nagappa*, AIR 1954 SC 440 this Court held that such error is an error which is a patent error and not a mere wrong decision. In *Hari Vishnu Kamath v. Ahmad Ishaque*, AIR 1955 SC 233, it was held:

“It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.

Mr. Pathak for the first respondent contended on the strength of certain observations of Chagla, C. J. in – ‘*Batuk K. Vyas v. Surat Borough Municipality*, AIR 1953 Bom 133’ that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinion also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.”

Therefore, it can safely be held that the petitioners have not made out any case within the meaning of

Article 137 read with Order XL of the Supreme Court Rules and Order 47, Rule 1, CPC for reviewing the judgment in Sarla Mudgal case. The petition is misconceived and bereft of any substance.”

.....

14. Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court, in *Jain Studios Ltd. v. Shin Satellite Public Co. Ltd.* (2006) 5 SCC 501 : (AIR 2006 SC 2686), held as under:

“11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of “second innings” which is impermissible and unwarranted and cannot be granted.”

15. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the Principles:

16. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable:-

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words “any other sufficient reason” has been interpreted in *Chhajju Ram v. Neki*, AIR 1922 PC 112 and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius & Ors.*, (1955) 1 SCR 520: (AIR 1954 SC 526), to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.*, JT 2013 (8) SC 275 : (2013 AIR SCW 2905).

(B) When the review will not be maintainable:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

9. The above principles are culled out from the judgment of the Hon'ble Supreme Court itself. That is a law of the land. They are salutary in character and by virtue of Article 141 of the Constitution of India bind all the judicial authorities. We cannot override the law declared by the Hon'ble Supreme Court of India as that binds all courts within the territory of India. The review petitioners before us are aware of the same. Yet, they have, in the garb of the order of the Hon'ble Supreme Court passed in this case, preferred this review petition not through the same advocates/counsel, who argued the matter when the order under review was passed by this court. They were aware that respondent no. 6 had challenged the acquisition of the land/property in issue unsuccessfully. The property stood acquired and the owner has lost his right, title and interest therein. He/it could not have propped-up the tenants/ occupants of the building/structure standing on the land to question the acquisition. Therefore, as a strategy, the alleged dilapidated and

unsafe condition of the structure/building was put in issue in the original writ petition purely to gain sympathy from this court. The very purpose of the writ petition was to take another chance or, to put it differently, initiate a second round to wriggle out of the acquisition of the property. Therefore, advisedly, the counsel arguing the matter at the initial stage and when the order under review was passed, did not base his arguments on the pleadings, which we have reproduced above. When no argument was raised based on such pleadings and advisedly and purposely, though the pleadings were on record, now, through different advocates on record and distinct set of counsel, the petitioners are seeking to get over a binding order of this court. This is a third round and in the garb of a review, a re-hearing of the case is sought. That is why we have deprecated the practice and routinely adopted in this court of litigants filing review petitions not through the same advocates and counsel, who were engaged when the orders under review are passed. A different set of advocates/counsel is engaged and the same contentions and submissions, which were either not raised, given up or negatived earlier, are sought to be re-introduced by taking advantage of the liberty granted by the Hon'ble Supreme Court of India. Should we, therefore, encourage this trend, which destroys long-standing, healthy practices and traditions of this court. The professionals and litigants may not

feel anything about the rich heritage and healthy practices and traditions of this court, but surely we cannot abandon or ignore them. More so, when they are deeprooted and have stood the test of time.

10. That is why we are of the firm opinion that this review petition lacks in bonafides. It is frivolous and vexatious as well. It is dismissed with costs quantified at Rs.5 lacs. The costs be paid in one set to respondent nos. 1 to 4 and in the event the same are not paid within a period of four weeks, these authorities can initiate steps to recover them as arrears of land revenue.

(M.S.SONAK, J.)

(S.C.DHARMADHIKARI, J.)