

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

REVIEW PETITION NO.53 OF 2017
IN
WRIT PETITION NO.1235 OF 2013

All India IDBI SC, ST, Nav Buddhist and
OBC, Officers' Welfare Association Petitioner
Vs.
IDBI Bank Ltd. & Others Respondents

Mr. Sangram L. Suryawanshi with Mr. Arun D. Nagarjun
i/by Mr. Sunil S. Sonawane for the Petitioner.
Mr. Sudhir Talsania, Senior Counsel with Ms Kanchan
Pamnani for Respondent No.1.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : OCTOBER 06, 2017

P.C:

1. We have heard the petitioner's counsel on this
review petition.

2. The review petitioner is seeking a review of the order
passed in Writ Petition No.1235 of 2013, dated 1-3-2017.

3. The review petitioner has argued that if the grievance of the petitioner was of reduction of the duration of sick leave by 180 days as arbitrary and illegal, then, it was incumbent upon this Court to have scrutinised the action of the respondent to this petition, namely, the IDBI on the touchstone of Article 14 of the Constitution of India. That Article mandates that all actions of the State should be fair, reasonable and non-discriminatory. If this facet had been noted and in the context of several Judgments of the Hon'ble Supreme Court of India and which permit judicial review of administrative action, then, this Court would have reached a different conclusion.

4. It is time to remind the parties like the review petitioner that in a recent Judgment delivered in the case of **Kamlesh Verma v. Mayawati & Ors.**, reported in AIR 2013 SC 3301, the Hon'ble Supreme Court has discussed the ambit and scope of the powers of review. The Hon'ble Supreme Court has held that merely because another facet or aspect of an argument already canvassed and dealt with has been brought to the notice of the Court in a review petition, that does not mean the earlier

Judgment is vitiated by an error apparent on the face of the record. The review jurisdiction does not furnish an opportunity to the Court to recall its order and rehear the case or matter disposed of once again on merits. If that is how the review jurisdiction is understood, every erroneous decision could be corrected by the same Court which passed it. Then there would be no need of an appeal or revision. This is not what the review jurisdiction permits. In **Kamlesh Verma** (supra), 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-

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 not 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.”

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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 negated. 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 Baselios 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.”

5. If we have missed out some facet of the contentions and submissions advanced on the limits of judicial review of an

administrative action, then, the order under review may, at best, be erroneous. The review petitioner can approach a higher Court and have it corrected. We cannot entertain the review petition and permit the petitioner to canvass the very same argument again. The review petition is misconceived and is dismissed. No costs.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)