

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Review Application No.39 of 2017
C.M.P.No.7107 of 2017

Mrs.Kalaiselvi

... Applicant

-VS-

1. The Official Assignee,
High Court of Madras,
Chennai - 600 104.

2. G.M. Jayaraman
3. J. Thiagarajan
4. Dr.Neeraja Ananth

... Respondents

Review Application has been filed, for a review of the order, dated

17.02.2017, passed by a Division Bench of this Court, in O.S.A.No.79 of 2013.

For applicant

: Mr.M.Radhakrishnan

For 1st respondent

: Mr.Vasanthakumar,
Deputy Official Assignee

ORDER

(Order of this Court was made by **S.MANIKUMAR, J.**)

Pursuant to a notification, dated 15.09.2011, in Dinathanthi by the Official Assignee, Chennai, 1st respondent herein, regarding auction sale of the property at Flat No.2, Ground Floor, Plot No.754, 4th Avenue, D Sector, Anna Nagar West, Chennai, husband of the applicant, Mr.V.Jaishankar participated in the auction, held on 28.09.2011 and offered to purchase the property for Rs.53,25,000/-. Sale was determined in his favour. Demand draft to the tune of Rs.15,00,000/-, in favour of the Official Assignee, was taken. In this regard, the Official Assignee has issued receipt No.10143, dated 29.09.2011, to the applicant's husband.

2. The applicant has further submitted that this Court, vide order, dated 02.04.2012, in Application No.93 of 2012 in I.P.No.84 of 2001, wherein, the applicant has been shown as the 3rd respondent, confirmed the sale in favour of the applicant, being the nominee of her husband, the highest bidder. However, the applicant was not issued with any notice, in the said application and that the proceedings in the above application were commenced and completed in her absence, despite the fact that she was shown as the 3rd respondent in the said application. Thereafter, the petitioner has paid the entire residual amount of Rs.38,25,000/-, on 02.07.2012. In spite of the same, the applicant could not obtain sale deed, in her favour.

3. Therefore, the applicant has filed A.No.265 of 2012, seeking for an order to condone the delay of 61 days, in paying the balance sale price and direct the Official Assignee to execute the sale deed, in her favour, as per the sale confirmation order passed by this Court in Application No.93 of 2012, dated 02.04.2012. The Official Assignee opposed the application, stating that the applicant has wilfully committed default in payment of balance purchase money. Following the decisions in **Manilal @ Mohanlal Shah and Others vs Sardar Sayd Ahmed Sayed Mahmad and another (AIR 1954 SC 349)** and **Sardara Singh (Dead) by Lrs and another vs Sardara Singh (Dead) and others (1990 (4) SCC 90)**, the said application came to be dismissed by this Court on 07.01.2013, setting aside the auction in favour of the appellant, with a direction to the Official Assignee to re-advertise the property for auction. It was further ordered that auction be conducted within a period of one month from the date of the order. The reserved price was fixed at Rs.62,00,000/-.

4. Aggrieved by the same, the applicant has filed O.S.A.No.79 of 2013, on the ground that though she has been shown as a party in A.No.93 of 2012, no notice was served on her and she has filed the petition to condone the delay of 61 days in making the payment of balance purchase money, only with a view to avoid technicalities. According to her, the balance money was to be paid within thirty days from the date of intimation of the confirmation of sale to her. Considering the above submissions, vide order, dated 17.02.2017, in O.S.A.No.79 of 2013,

held as follows:

"7. Admittedly, the appellant paid the balance purchase money to the Official Assignee on 02.07.2012 by means of a Demand Draft dated 29.06.2012. In the affidavit, filed in support of her petition, the appellant has stated that a photocopy of the order of the confirmation dated 02.04.2012 was given by the Official Assignee only on 07.06.2012 after obtaining signatures. Therefore, according to the appellant, the balance purchase money was paid within thirty days from 07.06.2012.

8. It is not in dispute that the auction sale was governed by the terms and conditions. Clause 6 of the Condition reads as follows:

"The Purchaser has to wait until the sale is confirmed by the Official Assignee or by the Hon'ble High Court. No interest shall be given for deposit made by the Highest Bidder Purchaser. No Separate intimation of confirmation of sale will be sent. The Purchaser has to follow after the sale is knocked down in his favour."

9. In the said clause, it has been pointedly stated that no separate intimation of confirmation of sale will be sent and the purchaser has to follow after the sale is knocked down in his favour. A close consideration of Clause-6 of the terms and conditions of the Auction Sale extracted supra would reveal that the appellant is not bound to inform about the confirmation of sale and it is for her to follow after the sale is knocked down in his favour. In the light of the said condition, the contention of the appellant that thirty days period for the payment of the balance purchase money has to be calculated from the date of intimation of confirmation of sale cannot be countenanced.

10. The ambit and scope of the provisions of Rules 84 to 86 of

Order 21 have been explained by the Hon'ble Supreme Court in the cases of Manilal Mohanlal Shah and Others vs Sardar Sayd Ahmed Sayed Mahmad and another reported in AIR 1954 SC 349 and Sardara Singh (Dead) by Lrs and another vs Sardara Singh (Dead) and others reported in 1990 (4) SCC 90. As per the dictum laid down by the Hon'ble Supreme Court the provisions of Rules requiring to deposit the purchase money within the time limit are mandatory and non payment of price on the part of the defaulting purchasers renders the sale proceedings as a complete nullity. In case of default in payment of price by the auction purchaser, the property shall be resold after issuing fresh notification.

11. It is not in dispute that the provisions of Rules 84 to 86 are applicable to sale proceedings in question. The learned Single Judge, placing reliance on the dictum laid down by the Hon'ble Supreme Court dismissed the application.

12. The impugned order has been passed on appreciation of the facts and circumstance of the case. In our considered view, the conclusion reached by the learned Single Judge, deserves to be upheld.

13. In this view, the Appeal has to fail. Accordingly, the same is dismissed and the order of the learned Single Judge dated 07.01.2013 made in Application No.265 of 2012 in IP No.84 of 2001 is confirmed."

5. Aggrieved by the same, the present review petition has been filed, on the following grounds,

(a) This Court has dismissed O.S.A.No.79 of 2013 mainly relying on note 6 found in the auction sale notice with regard to the auction sale scheduled to be held on 28.09.2011 at Chennai. Note 6 reads as follows:

"The Purchaser has to wait until the sale is confirmed by the Official Assignee or by the Hon'ble High Court. No interest shall be given for deposit made by the Highest Bidder Purchaser. No Separate intimation of confirmation of sale will be sent. The Purchaser has to follow after the sale is knocked down in his favour."

While relying on the said note, this Court has ignored clause 1 of the Terms & Conditions of the said auction sale. Clause 1 of the Terms & Conditions reads:

"Every bidder shall be permitted to bid only in consideration of his assenting to the following conditions of sale and every person bidding shall be deemed to assent to the said conditions."

(b) This Court has ignored the fact that note 6 has not been incorporated in the Terms and Conditions and that only note 5 has been mentioned in clause 8 of the Terms and Conditions. This Court erred in not appreciating the fact that the petitioner had never assented to note 6 since the said note 6 was not incorporated in the Terms & Conditions and that the petitioner could not have been deemed to have assented to Note 6. Thus, this Court has committed an error apparent on the face of the record.

(c) This Court has ignored the grounds raised in OSA NO.79 of 2013 and therefore the order dated 17.02.2017 in OSA No.79 of 2013 deserves to be reviewed.

(d) This Court has erred in not appreciating that the order dated 2.04.2012 in Application No.93 of 2012 was approved by the

Hon'ble Court only on 30.05.2012. Prior to 30.05.2012, nobody knew about the said order dated 02.04.2012 of this Court. Even assuming without conceding that no separate intimation of confirmation was required to be sent to the parties likely to be affected, this Court ought not have arrived at a conclusion that it was not incumbent upon this Court to issue a summons to a party who was shown as one of the respondent in Application No.93 of 2012 which was moved by the official assignee for the purpose of the confirmation of the auction sale held on 28.09.2011. Since this Court has relied only on note 6 and failed to appreciate that the very order dated 2.04.2012 was not in existence as on 2.04.2012 and that the same had come into existence only on 30.05.2012, this Court has committed an error apparent on the face of the record in concluding that the petitioner had paid the residue of purchase money beyond the period of 30 days from the date of confirmation.

(e) This Court has failed to consider Ground (a) of OSA.No.79 of 2013, which reads as follows:

"The learned Judge has in paragraph 18 of the impugned order observed: "The contention of the learned counsel, that the applicant / auction purchaser was not aware, cannot be accepted, as the applicant was party to the application for confirmation and had the notice of the proceedings. Therefore, it cannot be accepted that the applicant was not aware of the order confirming the sale". This observation of the learned Judge is contrary to record. A perusal of the record of Application No. 93 of 2012 in I.P. No. 84 of 2001 filed by the respondent - Official Assignee would reveal that the appellant herein was never served with notice of the said application by the Hon'ble Court. The learned Judge has thus erred in holding that the auction purchaser, appellant herein, had notice

of the proceedings viz, Application No. 93 of 2012 filed by the respondent -Official Assignee for confirmation of the sale."

(f) This Court has failed to consider Ground (b) of OSANo.79 of 2013, which reads as follows:

"The learned Judge ought to have held that the appellant herein had knowledge of confirmation of sale only on 07.06.2012 when a copy of the order of the Hon'ble Court in Application No. 93 of 2012 in I.P. No. 84 of 2001 was served on the appellant by the Official Assignee and that the appellant had paid the entire residue purchase money viz. Rs.38,25,000 within 30 days from the date of intimation of confirmation of the sale."

(g) This Court has failed to consider Ground (c) of OSANo.79 of 2013, which reads as follows:

"The learned Judge ought to have held that the application of the appellant herein for condonation of the so called delay of 61 days in making payment of the residue purchase price was filed only with a view to avoid technicalities and that such an application was really necessary in view of the fact that the appellant herein was never informed either by the Hon'ble Court or by the Official Assignee about the date of confirmation of sale viz. 02.04.2012."

(h) This Court has failed to consider Ground (d) of OSANo.79 of 2013, which reads as follows:

The learned Judge ought to have interpreted the expression "shall pay the residue of the purchase money to the Official Assignee within 30 days from the date of confirmation" used in condition No.8 of the terms and conditions of the auction sale in question to mean "shall pay residue of the purchase money to the Official Assignee within 30 days from the date of intimation of confirmation" especially when the Hon'ble Court had failed to order notice of

Application No.93 of 2012 in I.P. No. 84 of 2001 to respondent No.3 therein, the appellant herein.

(i) This Court has failed to consider Ground (e) of OSA.No.79 of 2013, which reads as follows:

"The learned Judge ought to have appreciated the maxim "an act of the Court shall prejudice no person" and ought to have held that since the appellant herein had paid the entire residue purchase money of Rs.38,25,000/- within 30 days from the date of intimation of the confirmation of sale to her, a sale deed in respect of the property in question was required to be executed immediately in her favour."

(j) This Court has failed to consider Ground (f) of OSA.No.79 of 2013, which reads as follows:

"The learned Judge ought to have held that there was no delay whatsoever on the part of the appellant herein in making payment of the entire residue purchase money of Rs.38,25,000/- to the respondent - Official Assignee as per condition No.8 of the terms and conditions of the auction sale in question."

(k) This Court has failed to consider Ground (g) of OSA.No.79 of 2013, which reads as follows:

"The learned Judge ought to have directed the respondent - Official Assignee to execute the sale deed in favour of the appellant herein as per the order of confirmation of sale dated 02.04.2012 passed by the Hon'ble Court in Application NO.93 of 2012 in I.P. No. 84 of 2001."

(l) This Court has ignored that note 6 relied on the Hon'ble Court for dismissing OSA.No.79 of 2013 is not statutory in character. That apart, this note has not even been mentioned in the Terms & Conditions of the auction sale. Either the Hon'ble Court which had

confirmed the auction sale in favour of the petitioner on 2.04.2012 ought to have informed the petitioner about the confirmation of sale, or the Official Assignee ought to have discharged his duty by informing the petitioner about the date of confirmation of the sale immediately after the confirmation of sale. Both of them failed to discharge their Obligations towards a citizen. The Hon'ble Court ought to have appreciated that no citizen can be penalized for the failure of this Court or the failure of the Official Assignee to discharge their duties in connection with an auction sale conducted on behalf of and confirmed by this Court. This Court has thus committed an error apparent on the face of the record in relying on note 6 aforesaid and dismissing OSA.No.79 of 2013."

6. The Official Assignee, High Court, has filed a detailed report, stating that the respondents 2 and 3 have been adjudicated as insolvents, on their own petition, by order, dated 14.06.2001, in I.P. No. 84 of 2001. Consequent upon the order of adjudication, Official Assignee had taken over the properties of the insolvents. The insolvents' property at Flat No.2, Ground Floor, Plot No.754, 4th Avenue, 'D' Sector, Anna Nagar West, Chennai - 101, was brought for auction sale by the Official Assignee on 14.10.2006 and subsequently, seven auction sales were conducted up to 24.02.2011. Since the 7th auction sale was not confirmed by this Court, 8th auction sale was conducted on 28.09.2011 at the premises bearing Flat No.2, Ground floor, Plot No.754, 4th Avenue, 'D' Sector, Anna Nagar West, Chennai-101 and one Mr.V.Jaishankar, husband of the Review Petitioner herein, was the only bidder. The bid was Rs.53,00,000/- and the sole bidder,

Mr.V.Jaishankar, offered Rs.53,25,000/- and the entry fee of Rs.15,00,000/- paid by him, was taken as Earnest Money Deposit, since the entry fee itself was more than 25% of sale price. The said Mr.V.Jaishankar, successful bidder, by letter dated 18.01.2012, requested the Official Assignee to execute the sale deed in favour of his nominee Mrs.Kalaiselvi.

7. The Official Assignee has filed Application No.93/2002, before this Court to confirm the sale of property in favour of the nominee of the successful bidder Mrs.Kalaiselvi for Rs.53,25,000/-. This Court was pleased to confirm the sale in favour of Mrs.Kalaiselvi, by order, dated 02.04.2012. The said purchaser failed to pay the balance sale consideration within the stipulated time, i.e., 30 days from the date of confirmation. She filed Application No.265/2012, seeking for an order to condone the delay of 61 days in paying the sale price and for a direction to the Official Assignee to execute the sale deed in her favour, as per the order passed by this Court in Application No.93/2002, dated 02.04.2012. This Court, by order dated 07.01.2013, dismissed the Appln.No.265/2012 and directed the Official Assignee to conduct a fresh auction sale fixing the reserve price at Rs.62,00,000/-. Accordingly, Official Assignee conducted fresh auction sale on 06.02.2013 and the sale was knocked down in favour of one Dr.Neeraja Ananth who was the highest bidder for Rs.95,25,000/-, she has deposited 25% of the sale price, which comes to Rs.24,00,000/-.

8. Aggrieved by the order of dismissal, dated 07.01.2013, passed in Appln.No.265/2012, Kalaiselvi, has filed an Appeal in O.S.A.No.79/2013. A Hon'ble Division Bench, by order dated 05.02.2013 in M.P.1/2013 in O.S.A.No.79/2013, granted interim stay of confirmation of sale held on 06.02.2013. Subsequently, the Hon'ble Division Bench dismissed the Appeal in O.S.A.No.79/2013 and M.P.No.1/2013, dated 17.02.2017 and thereby, confirmed the order, dated 07.01.2013, passed by the Insolvency Court.

9. The Official Assignee has further submitted that Application Nos.222 and 223 of 2017 have been filed by her, before the Insolvency Court in I.P.No.84/2001, seeking for an order to confirm the sale in favour of the highest bidder, Dr.Neeraja Ananth for Rs.95,25,000/- or whether the property may be brought for another auction sale considering the escalation in market value and for an order to refund the amount remitted by Mrs.Kalaiselvi in the auction sale held on 28.09.2011 respectively. The aforesaid Applications came up before the Insolvency Court on 18.08.2017 and the learned Single Judge had allowed the Applications and confirmed the sale held on 07.01.2013 in favour of Dr.Neeraja Ananth and directed the highest bidder, Dr.Neeraja Ananth to deposit the balance sale consideration on or before 15.09.2017 and the Official Assignee was directed to refund the deposit amount made by Kalaiselvi.

10. Even though terms and conditions have been separately mentioned in the sale catalogue, note which has been mentioned in the sale catalogue, will form part of the sale condition and the bidder is also bound by the note printed in the sale catalogue. The Review Petitioner mainly has relied upon Clause 1 of Terms and Conditions, which reads as follows:

"Every bidder shall be permitted to bid only in consideration of his assenting to the following conditions of sale and every person bidding shall be deemed to assent to the said conditions"

Review petitioner has contended that the notes printed in the sale catalogue will not bind upon her.

11. The Official Assignee, High Court, Madras, has further submitted that the sale catalogue also forms part and parcel of the Terms and Conditions of Sale. Once the sale is knocked down in favour of the highest bidder, a duty is cast upon the highest bidder to follow the matter and to ascertain whether the sale has been confirmed or not.

12. Another contention raised by the petitioner herein is that even though the sale has been confirmed on 02.04.2012, the order was made ready only on 30.05.2012. Till such time, except the learned Single Judge who had passed the order, no other person including the Official Assignee, highest bidder or any other creditor was not aware of the confirmation of the sale. This

contention is not acceptable for the following reasons that when the matter was listed before the Insolvency Court on 02.04.2012 in the Cause List, name of the highest bidder, namely, Mrs.Kalaiselvi was printed and that sale was confirmed in her favour, namely the Review Petitioner/Appellant herein, Mrs.Kalaiselvi on 02.04.2012 and the Application No.93/2012 was allowed in the open Court and that the order was made ready on 30.05.2012. In support of this contention, Official Assignee has produced the cause list, which has been maintained by the Registry of this Court, in which, Application No.93/2012 has been shown as 'Ordered'. Hence, the Official Assignee has contended that it is well known to all the parties in the above said Application including the highest bidder, that sale was confirmed on 02.04.2012 itself, since the name of the highest bidder, Kalaiselvi has been printed in the cause list. The other contentions raised by the Review Petitioner are not maintainable either in law or on facts. For the abovesaid reasons, Official Assignee has prayed for dismissal of the review petition.

Heard the learned counsel for the parties and perused the materials available on record.

13. Note 6 of the Schedule of property, mentioned in the Auction Sale, to be conducted on 28.09.2011, is as follows:

"The purchaser has to wait untill the sale is confirmed by the official assignee or by the Hon'ble High Court. No interest shall be given for deposit made by the highest bidder/Purchaser. No separate intimation of confirmation of sale will be sent the purchaser has to follow after the sale is knocked down in this favour."

14. Clause 1 of the Terms and Conditions for the abovesaid auction sale, is extracted hereunder:

"1. Every bidder shall be permitted to bid only in consideration of his assenting to the following conditions of sale and every person bidding shall be deemed to assent to the said conditions."

15. Notes and terms & conditions, form part of the sale notice. Thus, once the petitioner has participated in the auction, the contention that she has not accepted the notes, which form part of the sale notice, cannot be accepted. It is also to be seen that the contention of the review petitioner that she has not accepted Note 6, has not been raised in the original application at all. However, when O.S.A.No.79 of 2013, has been disposed of, by this Court, on 17.02.2017, a mistake had crept in that instead of Note 6, it has been typed as Condition No.6. Contents of the auction sale notice, along with Notes, have been considered. That could not be termed as an error apparent, on the face of record, warranting review of the order passed by this Court in O.S.A.No.79 of 2013.

16. Material on record discloses that when Application No.93 of 2012, to

confirm the sale, was listed in the Insolvency Court on 02.04.2012, name of the highest bidder, Mrs.Kalaiselvi, review petitioner, has been shown in the cause list and the said application was allowed in open Court. We have perused the cause list, dated 02.04.2012. As rightly contended by the learned Official Assignee, the review petitioner, having participated in the auction, ought to have followed the matter further and paid the balance purchase money within time. As per the sale notice, which contain notes also, no fresh intimation would be sent. At the risk of repetition, relevant portion of the order made in O.S.A.No.79 of 2013, dated 17.02.2017, is reproduced hereunder:

"8. It is not in dispute that the auction sale was governed by the terms and conditions. Clause 6 of the Condition reads as follows:

"The Purchaser has to wait until the sale is confirmed by the Official Assignee or by the Hon'ble High Court. No interest shall be given for deposit made by the Highest Bidder Purchaser. No Separate intimation of confirmation of sale will be sent. The Purchaser has to follow after the sale is knocked down in his favour."

9. In the said clause, it has been pointedly stated that no separate intimation of confirmation of sale will be sent and the purchaser has to follow after the sale is knocked down in his favour. A close consideration of Clause-6 of the terms and conditions of the Auction Sale extracted supra would reveal that the appellant is not bound to inform about the confirmation of sale and it is for her to follow after the sale is knocked down in his favour. In the light of the said condition, the contention of the appellant that thirty days period for the payment of the balance purchase money has to be

calculated from the date of intimation of confirmation of sale cannot be countenanced."

17. Though the learned counsel sought to review the judgment made in O.S.A.No.79 of 2013, dated 17.02.2017 on the grounds, stated supra, we are not inclined to do so, for the reason that review cannot be an appeal in disguise. Reference can be made to a few decisions, on the point of review,

(i) The Hon'ble Supreme Court in **Lily Thomas v. Union of India**, reported in **2000 (6) SCC 224**, while considering the scope of review and the limitations imposed on its exercise under, Article 137 of the Constitution of India, held as follows:

"52. The dictionary meaning of the word "review" is the act of looking, over, 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 Thakershi & Ors. Vs. Pradyunmarsinghji Arjunsinghji** [AIR (1970) SC 1273], 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

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 & Ors.etc. Vs. State of Karnataka & Anr.etc. [1993 Supp. (4) SCC 595]** held:

"19. Review literally and even judicially means re- examination or re-consideration. 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 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 XLVII 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.

53. This Court in **M/s.Northern India Caterers (India) Ltd. Vs. Lt.Governor of Delhi [AIR 1980 SC 674]** considered the powers of this Court under Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order 40 Rule 1 of the Supreme Court Rules and held:

"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, (1965) 1 SCR 933 at p.948.** For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing. **G.L. Gupta v. D.N. Mehta, (1971) 3 SCR 748 at p.760.** 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. Dist. Judge, Delhi, (1971) 2 SCR 11 at p.27.** Power to review its judgments has been conferred on the Supreme Court by Art.137 of the Constitution, and that power is

subject to the provisions of any law made by Parliament or the rules made under Art.145. In a civil proceeding, an application for review is entertained only on a ground mentioned in O. XLVII, 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 XL, R.1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, 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. **Chandra Kanta v. Sheikh Habib (1975) 3 SCR 935.**"

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 ground specified in Order 47 Rule 1 of the Code of Civil Procedure which provides:

"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 40 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."

(ii) In **Aribam Tuleswar Sharma v. Aibam Pishak Sharma** , reported in **AIR 1979 SC 1047**, the Hon'ble Supreme Court held that,

"there is nothing in Article 226 of the Constitution to preclude a 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 powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(iii) In yet another decision in **Rajindersingh v. Lt. Governor** reported in **2005 (13) SCC 289**, at paragraph Nos.15 and 16, the Hon'ble Supreme Court held that law is well settled that the power of judicial review of its own order by the High Court inheres in every Court of plenary jurisdiction to prevent miscarriage of justice. Power of judicial review extends to correct all errors to prevent miscarriage of justice. It was further held that Courts should not hesitate to review their own earlier order, when there exists an error on the face of record and the interest of justice so demands in appropriate cases.

(iv) In **Union of India v. Kamal Sengupta** reported in **2008 (8) SCC 612**, the Hon'ble Supreme Court, at Paragraphs 14 and 15, has held that,

"14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

15. The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and

elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision."

(v) Referring to various decisions of the Hon'ble Apex Court as well as this Court, a Hon'ble Division Bench of this Court, in **Infant Jesus Teacher Training vs. M.Manikandan (Rev.Appn.No.38 of 2010 in W.A.No.1145 of 2009, dated 31.08.2010)**, considered the scope of review and at paragraphs 14, 31 and 32, held as follows:-

"14.Considering the scope of review jurisdiction and holding "mistake or error apparent on the face of the record must be self evident and does not require a process of reasoning, in **Parsion Devi v. Sumitri Devi, ((1997) 8 SCC 715)**, the Supreme Court has 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 = (1964) 5 SCR 174)** (SCR at p. 186) this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not

involve any substantial question of law is an error apparent on the face of the record. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an error apparent on the face of the record, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by error apparent. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.”

.....

31. The review proceeding is not by way of an appeal. Holding that the review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence on record for finding the error would amount to exercise of Appellate Jurisdiction, which is not permissible, in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170, the Supreme Court held 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 Tuleswar Sharma v. Aribam Pishak Sharma* ((1979 (4) SCC 389), speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

“It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* (AIR 1963 SC 1909), 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 Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* (AIR 1960 SC 137), 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 powers of the superior court to issue such a writ.”

32. As held by the Hon'ble Supreme Court in AIR 1960 SC 137, **(SATYANARAYAN LAXMINARAYAN HEGDEVS. MALLIKARJUN BHAVANAPPA TIRUMALE)**, the error must be apparent on the face of the record i.e., error must be self-evident and not which has to be established by a long drawn process of reasoning or which has to be searched. In other words, it must be an error and it must be one which must be manifest on the face of the record. Under the guise of review, parties are not entitled to rehearing of the same issue. An error can be said to be apparent on the face of the record only if such error is patent and can be located without any elaborate argument and without any scope for controversy with regard to such error, which stares at the face even by a mere glance of the judgement. The said position of law is reiterated in the decisions reported in (1997) 8 SCC 715, **DELHI ADMINISTRATION VS. GURDIP SINGH UBAN AND OTHERS** (2001(1) MLJ 45 (SC)), **KERALA STATE ELECTRICITY BAORD VS. HITECH ELECTROTHERMICS HYDROPOWER LTD. AND OTHERS** ((2005) 6 SCC 651), **HARIDAS DAS VS. USHA RANI BANK** (2006(4) SCC 78) and **STATE OF WEST BENGAL AND OTHERS**

VS. KAMAL SENGUPTA ((2008) 8 SCC 612).”

18. Contention of the review petitioner that the Hon'ble Division Bench, while disposing of O.S.A.No.79 of 2013, dated 17.02.2017, has not adverted to the grounds raised therein, cannot be accepted. The petitioner has not substantiated the grounds to review the impugned order. Hence, the review application is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

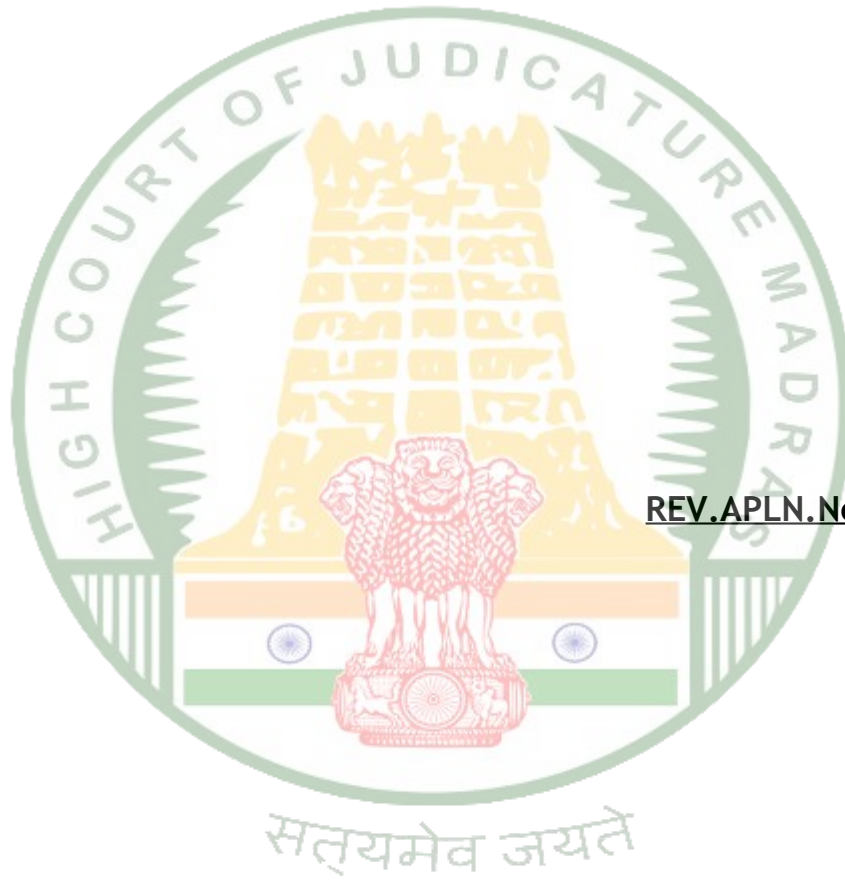
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(S.M.K.,J.) (N.A.N.,J.)
13.12.2017



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S.MANIKUMAR, J.
AND
N.AUTHINATHAN, J.



REV.APLN.No.39 OF 2017

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