

***RA-CW 529 of 2017 O&M) in
CWP No.15820 of 2014***

Ombir vs. State of Haryana and another

Present: Mr.Sunil Sihag, Advocate

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1. Review application has been filed by Mr.Sunil Sihag. The review application has been filed by the counsel other than the counsel whose presence is recorded in the judgment dated 9.8.2016. Mr.MD Khan, Advocate had filed the writ petition and he argued the matter before this Court. There is not even the Vakalatnama of Mr.Sunil Sihag on record nor “No Objection Certificate” has been obtained from the original counsel. In view of the law laid down by the Supreme Court in Tamil Nadu Electricity Board vs. N.Raju Reddiar and another, 1997 (9) SCC 736, the review application filed by the counsel other than the original counsel is not maintainable. In the case of Tamil Nadu Electricity Board, the Supreme Court held as under:-

“...It is a sad spectacle that new practice unbecoming of worthy and conducive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr. V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on April 24, 1996. Yet another advocate, Mr. S.U.K. Sagar, has now been engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or

fact is apparent on the record, no review can be filed; that too by the advocate on record who neither appeared nor was party in the main case. It is salutary to not that court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No.2670/96 in CA No.1867/92, a Bench of three Judges to which one of us, K. Ramaswamy,J., was a member, has held as under:

"The record of the appeal indicates that Shri Sudarsh Menon was heard and decided on merits. The Review Petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the Review Petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would be not in the interest of the profession to permit such practice. That part, he has not obtained "No Objection Certificate" from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the "No Objection Certificate" would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the "No Objection Certificate" from the erstwhile counsel has disentitled him to file the

Review Petition. Even otherwise, the Review Petition has no merits, It is an attempt to reargue the matter on merits. On these grounds, we dismiss the Review Petition".

2. While relying on the aforesaid ruling of the Supreme Court, a Single Bench of the Allahabad High Court in Mohan Lal Bagla Son of Late Gopi vs Board Of Revenue And Ors, AIR 2005 All 308 has observed as under:-

“11. Otherwise also for a new counsel it may not be proper to move for the reasons as indicated below. In respect to question involved and to the argument which were advanced by learned counsel appearing for the party and in respect to queries which were made by the Court whether were satisfactorily replied or not, it can not be possibly in the knowledge of another counsel who was not appearing at the time of first hearing of case. Take a case that a question was put to a counsel but he was not in a position to answer it, a particular document in support of claim was asked to be placed but learned advocate is not in a position to show and refer to the relevant document, and on a particular aspect, he might have virtually surrendered for the reason that he probably had no valid reply and thereafter, judgment comes, dealing with all the aspects. Now review petition is filed on the ground that something was not considered which was argued or there is wrong observation about certain facts or on alike ground then it has to be said that a new counsel is debarred from raising all these objections or objection of a like nature. The review petition appears to have been filed by new counsel mainly on the ground that some letters written by Mohan Lal Bagla to the Deputy Collector, Sales Tax and to the Commissioner have not been taken

note and bid sheet has not been considered by this Court in respect to which suffice it to say that it cannot be said by Sri Singh, who is new counsel for the purpose of arguing review petition that whether the aforesaid letters were referred in the argument and they were relied by the then counsel and whether any effort was made by learned advocate to lay emphasis on those documents as they have any relevance in the matter in issue and thus the question touching with the proceedings of the Court and discussion during course of argument by a new counsel who was neither arguing counsel nor assisting counsel at the initial stage, cannot be permitted. To argue same details as a question of fact in second inning of the matter cannot be permitted. It is under very exceptional circumstance where it can be demonstrated that on the finding and reasoning so given, there is error apparent on the face of record which can be termed to be a mistake within the meaning of error apparent as that can be discovered without any argument, it may be filed by a new advocate but that too after obtaining no objection from earlier counsel. If a case is to be argued on the same set of facts by change of counsel , at several occasion, it may be possible that with imminence of the counsel, a new dimension to the augment may come on same set of facts. Skill in the argument and advocacy is to vary always from counsel to counsel. Although earlier two senior advocates of this Court namely Sri R.N. Singh and Sri V.B. Upadhyaya argued the matters on behalf of applicant at length with full vehemence at their command but now Sri V.B. Singh, learned senior advocate wants to argue the matter in his own way by placing the same record and same pleadings. On the facts of present case, this Court is of the view that filing of review petition on the ground so taken in the application cannot be said to be just and proper so as to

entitle Sri Saran, learned advocate and Sri Singh, learned senior advocate to file and argue this review petition.”

3. In the present case, by filing a review application through a new counsel, the petitioner is trying to re-open the whole case and that too in the absence of the original counsel who was heard by this Court and to whom queries were put by this Court while passing the judgment dated 9.8.2016.

4. It is also to be noticed that the Office has raised objection that review application is filed beyond limitation and there is no application for condoning the delay in filing the review application. The objection of the Office is sustained. The LPA Bench has passed the order on 5.5.2017 and after a lapse of more than a year, the petitioner has filed the present review application and that too through a counsel who did not argue before this Court while passing the judgment dated 9.8.2016. The petitioner even did not bother to file an application for condoning the delay of about 446 days in filing this review application, inspite of the objection raised by the Office.

5. The result of the written test was declared on May 29, 2013 against the advertisement dated November, 23, 2012 inviting applications from eligible candidates for selection of Clerks in the subordinate courts. In the judgment dated 9.8.2016, this Court has already noticed that candidates under the reserved category of Physically Handicapped Persons have been selected and appointed as Clerks and posted in various Sessions Divisions three years ago. Now after about 5 years of selection and postings, the petitioner is trying to

re-open the entire case by filing this review petition and that too by a counsel who did not argue before this Court.

6. For the foregoing reasons, this review application is dismissed.

**(RAJIV NARAIN RAINA)
JUDGE**

9.8.2018
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