

108

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RA-RS-10-C-2018 (O&M) IN
RSA-3571-2002
Date of decision : 27.03.2018**

Rajender and others

... Applicant(s)

Versus

The Food Corporation of India and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Surinder Gandhi, Advocate for
the review applicant/appellant(s).

AMIT RAWAL, J. (ORAL)

This is an review application under Order XLVII read with Section 151 of the Code of Civil Procedure for review of the judgment dated 20.10.2015 passed by this Court accompanied by an application bearing CM-2148-C-2018 seeking condonation of delay of 808 days in filing the review application.

This Court vide order dated 20.10.2015 dismissed the aforementioned regular second appeal preferred by the review applicant/appellants/plaintiffs, in essence, the claim of the plaintiffs for declaration and consequential relief of mandatory injunction had been rejected by all the Courts including this Court. Applicant approached the Hon'ble Supreme Court vide SLP (CC) No.19664 of 2016 and vide order dated 24.10.2016, liberty was granted to withdraw the petition by approaching this Court by way of review application. It is, in this aspect of

the matter, the review application has been filed.

Mr. Gandhi, learned counsel appearing on behalf of the applicant/appellants/plaintiffs submitted that there is an error apparent on record in the order, sought to be reviewed, for, the Contractor with whom the appellants-plaintiffs were employed, had appeared in the witness box and produced the list of the employees submitted to the office of Food Corporation of India in pursuance to the circular/scheme promulgated by the Food Corporation of India for absorbing the employees engaged by the Contractor on their rolls for they had expertise of handling the work. That piece of evidence was sufficient for the Courts below to decree the suit. This Court had failed to advert to the aforementioned evidence, thus, there is an error apparent on record.

I have heard the learned counsel for the review applicant/appellants/plaintiffs, appraised the paper book and of the view that the aforementioned piece of evidence brought on record by the Contractor would not have helped the applicant/appellants-plaintiffs as they had failed to discharge the onus for not cross-examining the witness of the Food Corporation of India as to whether the aforementioned list was ever communicated or brought on record through receipt Clerk and in case, such question had been put and was denied, it was also incumbent upon the applicant/appellants/plaintiffs to summon the entire file or record from the Food Corporation of India in support of the assertion. Having failed to do so, the review applicant/appellants/plaintiffs failed to discharge the onus, which heavily relied upon by them. There was no compliance of the provisions of Section 101 of the Indian Evidence Act. The review

application, in my view, tantamounts to reagitating of the issues, which is not permissible in view of the *ratio decidendi* culled out by Hon'ble the Supreme Court in “**Tamilnadu Terminated Full Time Temporary LIC Employees Association Vs. S.K. Roy, The Chairman, Life Insurance Corporation of India and another**” 2016 (9) SCC 366. For the sake of brevity, the relevant paragraph of the judgment reads as under:-

*"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**, 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."

The review application had filed only in 2018, whereas the liberty was sought in the month of October 2016. The period spent in availing the remedy could have been condoned, but no explanation has

come forth in not filing the review application immediately thereafter, therefore, the review application is dismissed on merits and also on the ground of limitation.

27.03.2018	(AMIT RAWAL)
Yogesh Sharma	JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No