

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.223 of 2017

In

Letters Patent Appeal No.1389 of 2011

=====

Bindeshwar Mandal son of Late Sundar Mandal @ Late Surendra Mandal,
residing at Mohallah- Power House Road, P.S.- Begusarai, District-
Begusarai.

... .. Respondent/Petitioner

Versus

1. The Bihar State Power Holding Company through its Chairman Cum Managing Director, Patna
2. The Secretary, Bihar State Power Holding Company, Patna.
3. The Joint Secretary, Bihar State Power Holding Company General Administration Department, Patna.
4. The Asstt. Engineer, E.R.- cum- Supply, Sub Division, Begusarai.
5. Sri Hare Krishna, Electrical Superintending Engineer, Head- Quarter-cum- Enquiry Officer, Patna.

... ..Appellants/ Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Y.V.Giri, Sr. Advocate
Mr. Dilip Kumar Tiwary
Mr. Sunil Kumar Jha
Mr. Anil Kumar Anand
Mr. Lal Mani Sharma

For the Respondent/
Opposite Party/s : Mr. Vinay Kirti Singh
Mr. Vijay Kumar Verma
Mr. Akhileshwar Singh

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 06-03-2019

I. A. No.6260 of 2017

This interlocutory application has been filed by
the petitioner under Section 5 of the Limitation Act for
condonation of delay caused in filing the review petition.



2. Mr. Y. V. Giri, learned senior advocate for the petitioner submitted that after the order dated 23.09.2013 passed in LPA No. 1389 of 2011, the petitioner filed an special leave petition before the Supreme Court, which was dismissed as withdrawn, vide order dated 27.01.2017. After obtaining the certified copy of the aforesaid order on 16.02.2017, the instant review application under Order 47 Rule 1 of the CPC has been filed before this Court. He submitted that delay caused in filing the review application is neither intentional nor deliberate.

3. Mr. Vinay Kirti Singh, learned senior advocate for opposite parties does not seriously oppose the application for condonation of delay.

4. In view of submission made at the Bar, the delay caused in filing the review application is condoned.

5. The interlocutory application stands allowed.

Civil Review No. 223 of 2017

6. Heard Mr. Y.V. Giri, learned senior counsel for the petitioner and Mr. Vinay Kirti Singh, learned senior counsel for the opposite parties.

7. This application under Order 47, Rule 1 of the Civil Procedure Code (for short 'CPC') has been filed by the petitioner for review of the order dated 23.09.2013, passed in



LPA No. 1389 of 2011, whereby the appeal under Clause 10 of the Patna High Court, preferred by the opposite parties against the judgment and order dated 25th November, 2010, passed by the learned Single Judge in CWJC No. 5121 of 1997 was allowed and the impugned judgment and order dated 25th November, 2010, passed by the learned Single Judge was set aside and CWJC No. 5121 of 1997 was dismissed.

8. The brief facts of the case are that a disciplinary proceeding was initiated against the petitioner on 10th January, 1991, in which it was alleged that on 29th June, 1989, he had received a sum of Rs. 15,214.51 from one Vijay Kumar, a Junior Accounts Clerk at Balia which he was supposed to enter in the Cash Book and to deposit in the bank account of the Board. He did not enter the said amount in the Cash Book until 16th July, 1990 and returned the same to the said Vijay Kumar on 17th July, 1990. Thus he committed temporary embezzlement of Rs. 15,214.51 for the period from 29.06.1989 to 16.07.1990. The second charge against him was that Sri Vijay Kumar, Junior Account Clerk, Balia deposited a sum of Rs. 10,235/- on 31.07.1989 with the petitioner, who was acting as a Cashier, but he entered the amount in the Cash Book on 31.07.1989 and deposited the amount in the SBI on



26.07.1990, thereby he committed temporary embezzlement of Rs. 10,235/- for the period 31.07.1989 to 24.07.1990. The petitioner submitted his show cause. His main defence was that the said Vijay Kumar was supposed to forward him the cash receipt and the Daily Collection Register. Since he did not forward the Daily Collection Register, he could not enter the said money in the cash register nor he deposited the said amount in the bank.

9. After holding enquiry, the enquiry officer found that both the charges levelled against the petitioner were proved. In view of the finding of guilt recorded by the enquiry officer, the disciplinary authority served a notice to the petitioner to show cause as to why he should not be held guilty and why should he not be punished for the same.

10. After receiving reply from the petitioner, vide order dated 4th October, 1996, the disciplinary authority awarded him punishment of dismissal from service.

11. The said order of dismissal was challenged by the petitioner in the appeal. After dismissal of the appeal, a writ petition, vide CWJC No.5121 of 1997, was filed before this Court. The learned Single Judge allowed the writ petition and set aside the order of punishment dated 4th October, 1996 and



directed the erstwhile Bihar State Electricity Board to pay arrears of salary to the petitioner from the date of his dismissal from service till 31st January, 2009, the date on which he reached the age of superannuation. The Board was also directed to pay the arrears of terminal dues of the petitioner. The opposite parties preferred an appeal under Clause 10 of the Letters Patent before the Division Bench vide LPA No. 1389 of 2011, which was allowed, vide order under review dated 23.09.2013 after hearing the parties.

12. Operative portion of the order passed by the Division Bench reads as under:-

“We have been taken through the departmental proceedings, the charge sheet, the evidence, the enquiry officer’s report, the second show cause notice and the reply to the second show cause notice submitted by the writ petitioner.

In his reply to the charge sheet, the writ petitioner did admit the receipt of the aforesaid sums of Rs. 15,214.51 and Rs. 10,235/- from the aforesaid Vijay Kumar on 29th June 1989 and on 31st July 1989 respectively. He also admitted that he did not enter the said amounts in the Cash Register and that he did not deposit the same in the Bank; instead on 31st July 1990,



he returned the said amounts to the aforesaid Vijay Kumar. Thus, the major part of the charge levelled against the petitioner had been admitted. The only defence that the petitioner took was that the aforesaid Vijay Kumar had not forwarded the Daily Collection Register along with the aforesaid amounts; that the said Vijay Kumar had assured the writ petitioner to forward the Daily Collection Register within a few days but he did not do so. The said Vijay Kumar had been examined in the disciplinary proceedings by the department as witness no. 3. He did not support the defence taken by the writ petitioner. He, in his deposition, did admit that the Daily Collection Register was not forwarded along with the aforesaid amounts but, according to the said Vijay Kumar for the sum of Rs.15,214.51 he had forwarded the Daily Collection Register the very next day, i.e. on 30th June 1989; and for the sum of Rs. 10,235/- he had forwarded the Daily Collection Register two days later. The said Vijay Kumar having not supported the writ petitioner, his defense should necessarily fail. The evidence of the Assistant Engineer also has been considered by the enquiry officer. Having considered the evidence on record, the enquiry officer has recorded finding of guilt against the writ



petitioner. Having regard to the nature of guilt proved against the writ petitioner, the Board has, in its discretion, imposed the punishment of dismissal from service.

In our opinion, the learned single Judge has erred in reappreciating the evidence on record and in holding that the evidence of the Assistant Engineer was not correctly appreciated by the enquiry officer. We may remind ourselves that in exercise of power of judicial review under Article 226 of the Constitution, this Court is not supposed to reappreciate the evidence in the departmental proceedings or to reevaluate its probative value and to record its own finding. The learned single Judge has also held that the reply to the enquiry report submitted by the writ petitioner was not considered by the disciplinary authority. We have perused the reply submitted by the writ petitioner. We must say that in the said reply, the writ petitioner had repeated his defence. In absence of any mitigating factor/s brought on the record by the writ petitioner or any new submission made by the writ petitioner, the disciplinary authority was not required to elaborate on the said reply and the repeated submissions. The submissions made in the said reply were already considered in the enquiry



proceedings. The enquiry report was accepted by the disciplinary authority. A fresh scrutiny was not called for.

For the aforesaid reasons, we hold that the learned single Judge has erred in reappreciating and reevaluating the evidence in the disciplinary proceedings and in recording his own finding. Having regard to the nature of the guilt proved against the writ petitioner, the order of punishment of dismissal from service should not call for interference by this Court. In absence of any procedural flaw in the disciplinary proceedings, interference by this Court, in exercise of power of judicial review, is not warranted.

Appeal is allowed. The impugned judgment and order dated 25th November 2010 passed by the learned single Judge in CWJC No. 5121 of 1997 is set aside. CWJC No. 5121 of 1997 is dismissed.”

13. Being aggrieved by the aforestated order passed by the Division Bench, the petitioner preferred special leave petition before the Supreme Court, vide Special Leave to Appeal (C) No.10798 of 2014, which was dismissed as withdrawn, vide order dated 27.01.2017.

14. Thereafter, the present review application seeking



review of the order dated 23.09.2013, passed by the Division Bench in LPA No. 1389 of 2011 has been filed. The grounds for review stated in the application are as under:-

“(i) For that the Hon’ble Division Bench has failed to appreciate the facts as well as points of law.

(ii) For that the Hon’ble Division Bench has erred in law as well as in facts.

(iii) For that the Hon’ble Division Bench has failed to appreciate that although subsequently Sri Vijay Kumar was made a witness in the proceeding against the petitioner, however, before examination of Sri Vijay Kumar whether the petitioner was at all informed about the date on which Sri Vijay Kumar was examined.

(iv) For that the Hon’ble Division Bench has failed to appreciate that any deposition/statement of Sri Vijay Kumar, if has been taken in the proceeding going on separately against Sri Vijay Kumar, without informing the petitioner about the date etc. for his examination, is not admissible and can not be used against the petitioner.

(v) For that the Hon’ble Division Bench has failed to take into consideration of the entire deposition/statement of Sri Vijay Kumar.

(vi) For that the Hon’ble Division Bench has



failed to take into consideration that from the deposition/statement of Sri Vijay Kumar in cross examination which was not done by the petitioner, it is itself evident that Sri Vijay Kumar was examined in the proceeding initiated against him and which was going on separately at that point of time and as such the deposition/statement of Sri Vijay Kumar is not admissible against the petitioner.

(vii) For that the Hon'ble Division Bench has failed to take into consideration that without any proof/evidence Sri Vijay Kumar had stated in his deposition i.e. in examination in chief that he had submitted the D.C.R. on the next date whether in cross examination Sri Vijay Kumar himself has accepted that he submitted the details of D.C.R. on 20.07.1990 which was accepted by the petitioner on 21.07.1990.

(viii) For that the Hon'ble Division Bench has failed to take appreciate that if Sri Vijay Kmar had not submitted the D.C.R. prior to 20-7-1990 then earlier to that the amount deposited by him neither could have been entered in the Cash Book nor could have been deposited in the Bank.

(ix) For that the Hon'ble Division Bench has failed to take into consideration that the charges against the petitioner in the proceeding against the petitioner were



different than the charge against Sri Vijay Kumar and as such proceeding against the petitioner and Sri Vijay Kumar were initiated separately.

(x) For that the Hon'ble Division Bench has failed to appreciate that when the charges against the petitioner and Sri Vijay Kumar were different and as such the proceeding against both, the petitioner and Sri Vijay Kumar were initiated separately by the Disciplinary Authority and as such by amalgamating/merging both the proceedings in one proceeding upon request of the Law Officer who was not appointed the Presenting Officer in the proceeding against the petitioner, inspite of the objection/protest of the petitioner, the Enquiry Officer who was not the Disciplinary Authority, has erred in law and as such the entire enquiry and the Enquiry report becomes vitiated.

(xi) For that the Hon'ble Division Bench has failed to take into consideration that Sri Vijay Kumar was examined on 1-10-1992 where as both the proceedings were amalgamated in the year 1994 by the Conducting Officer and as such the deposition of Sri Vijay Kumar taken in the proceeding initiated against him for the different charges without opportunity to the petitioner to cross examine him, after amalgamation of both the proceedings, is not



admissible against the petitioner and the same can not be used against the petitioner.

(xii) For that the Hon'ble Division Bench has failed to appreciate that by amalgamating both the proceedings the Conducting Officer has taken into consideration of the evidences/documents produced in the proceeding against Sri Vijay Kumar also and as such the Enquiry and the Enquiry report is itself vitiated.

(xiii) For that the Hon'ble Division Bench has failed to take into consideration that primarily Hon'ble Court is not required to look into the evidences and to review the same, however, for the ends of justice, the Hon'ble Court in its writ jurisdiction may look into the evidences collected during the enquiry and the same is not barred.

(xiv) For that the Hon'ble Division Bench has erred in law as well as in the facts.

(xv) For that even after Special Leave to Appeal before the Hon'ble Supreme Court which either has been dismissed in limine or has been dismissed as withdrawn, the present Review petition is maintainable.”

15. In addition to the grounds taken in the application, Mr. Y.V. Giri, learned senior advocate for the petitioner has submitted that the Division Bench committed an error, apparent



on the fact of the record in holding that the order passed by the learned Single Judge amounts to re-appraisal of the evidence adduced in domestic enquiry. He has submitted that the scope of judicial review is not limited only up to the extent of error apparent on the face of the record but also a mistake on the part of the Court. He contended that the substantive provision of law does not prescribe any limitation on the powers of the Court as far as a review of the order is concerned and it may be necessitated by way of invoking the doctrine of “*actus curiae neminem gravabit*”. In support of his submission, he has placed reliance on a judgment of the Supreme Court in **BCCI and another Vs. Netaji Cricket Club and others**, reported in **(2005) 4 SCC 741** and in case of **Usha Bharti Vs. State of Uttar Pradesh and others** reported in **(2014) 7 SCC 663**.

16. Mr. Vinay Kirti Singh, learned senior counsel, appearing for the opposite parties, has raised a preliminary objection regarding the maintainability of the review application. He submitted that once the civil review petition filed by the petitioner was dismissed by the Supreme Court without giving any liberty to the petitioner to file review petition, an application for review of the order passed by the Division Bench would not be maintainable before this Court.



He further contended that the petitioner has tried to assail the order passed by the Division Bench on merits, which is beyond the scope of the Order 47 Rule 1 of the CPC. The petitioner has failed to point out any error apparent on the face of the record and even otherwise there is no ground on the basis of which the application can be allowed.

17. In reply, Mr. Y.V. Giri, learned senior counsel submitted that even after dismissal of the SLP by the Supreme Court, a review application would be maintainable before this Court. In support of his submission, he has placed reliance on the decision of the Supreme Court in **Bakshi Deo Raj (2) and another Vs. Sudheer Kumar**, reported in **(2011) 8 SCC 679**.

18. We have heard learned counsel for the parties and carefully perused the records.

19. As far as preliminary objection raised by Mr. Vinay Kirti Singh, learned senior counsel for the opposite parties regarding maintainability of the review application after dismissal of the special leave petition is concerned, we find force in the submission of Mr. Giri, learned senior counsel for the petitioner that even after dismissal of the SLP the aggrieved party is entitled to maintain an application for review. He has rightly placed reliance on **Bakshi Dev Raj (2) Sudheer**



Kumar (supra) in this regard. In the said case, the Supreme Court, in paragraph 34 and 35, has held as under:-

“34. A reading of the above order makes it clear that based on the request of the counsel, the SLP came to be dismissed as withdrawn. It is also clear that there is no permission or reservation or liberty for taking further action. However, dismissal of SLP is not a bar for filing review before the same Court. This aspect was considered by a three-Judge Bench of this Court in *Kunhayammed v. State of Kerala*. The above aspect was dealt with elaborately in paras 38, 40 and 44: (SCC pp. 381-84)

“38. The review can be filed even *after* SLP is dismissed is clear from the language of Order 47 Rule 1(1)(a). Thus the words ‘no appeal’ has been preferred in Order 47 Rule 1(1)(a) would also mean a situation where special leave is not granted. Till then there is no appeal in the eye of the law before the superior court. Therefore, the review can be preferred in the High Court before special leave is granted, but not after it is granted. The reason is obvious. Once special leave is granted the jurisdiction to consider the validity of the High Court's order vests in the



Supreme Court and the High Court cannot entertain a review thereafter, unless such a review application was preferred in the High Court before special leave was granted.

40. A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected (i) as barred by time, or (ii) being a defective presentation, (iii) the petitioner having no locus standi to file the petition, (iv) the conduct of the petitioner disentitling him to any indulgence by the court, (v) the question raised by the petitioner for consideration by this Court being not fit for consideration or deserving being dealt with by the Apex Court of the country and so on. The expression often employed by this Court while disposing of such petitions are—‘heard and dismissed’, ‘dismissed’, ‘dismissed as barred by time’ and so on. May be that at the admission stage itself the opposite party appears on caveat or on notice and offers contest to the maintainability of the petition. The court may apply its mind to the meritworthiness of the petitioner's prayer seeking leave to file an appeal



and having formed an opinion may say 'dismissed on merits'. Such an order may be passed even ex parte, that is, in the absence of the opposite party. In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only. In our opinion neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order. Grounds entitling exercise of review jurisdiction conferred by Order 47 Rule 1 CPC or any other statutory provision or allowing review of an order passed in exercise of writ or supervisory jurisdiction of the High Court (where also the principles underlying or emerging from Order 47 Rule 1 CPC act as guidelines) are not necessarily the same on which this Court exercises discretion to grant or not to grant special leave to appeal while disposing of a petition for the purpose. Mere rejection of a special leave petition



does not take away the jurisdiction of the court, tribunal or forum whose order forms the subject-matter of petition for special leave to review its own order if grounds for exercise of review jurisdiction are shown to exist. Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to appeal. The petitioner has been turned away at the threshold without having been allowed to enter in the appellate jurisdiction of this Court. Here also the doctrine of merger would not apply. But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be subversive of judicial



discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger.

44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is up to the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the



nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal



is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely



affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.”

(emphasis in original)

35. In view of the principle laid down above by this Court, even after the dismissal of SLP, the aggrieved parties are entitled to move the court concerned by way of review. In the case on hand, though the appellants moved an SLP in this Court against the order of the High Court in the second appeal, admittedly, the SLP was dismissed as withdrawn without the leave of the Court.”

20. From a reading of the above observations in **Bakshi Dev Raj** (supra), it manifests that once the Supreme Court permits withdrawal of an SLP without recording reasons, it is as if no appeal had ever been filed or entertained. In absence of grant of special leave, there is no appeal in existence. The High Court’s judgment does not merge into any proceedings before the Supreme Court.



21. We, thus, decide the preliminary objection in favour of the petitioner and hold that this review petition is not barred because of the dismissal of the special leave petition as withdrawn by the Supreme Court, preferred against this order, of which the review is sought.

22. Coming back to the merit of the review petition, though Order 47 Rule 1 of the CPC provides for review of the judgment, the scope of such review is limited. Review of a judgment may be allowed on three grounds namely; (i) 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 (ii) on account of some mistake or error apparent on the face of the record, or (iii) for any other sufficient reason.

23. In support of his submission, seeking review of the order, Mr. Giri has placed reliance on the decisions of the Supreme Court in **BCCI Vs. Netaji Cricket Club** (supra) and **Usha Bharti Vs. State of Uttar Pradesh and others** (supra). In **BCCI Vs. Netaji Cricket Club** (supra), the Supreme Court had discussed about the scope of review in paragraph 88 to 90, which reads as under:-



“88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The word “sufficient reason” in Order 47 Rule 1 of the



Code are vide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine “*actus curiae neminem gravabit*”.

24. In **Usha Bharti Vs. State of Uttar Pradesh and others** (supra), the Supreme Court has taken into consideration the scope of review in paragraph 68 and 69, which reads as under:-

“68. We have no hesitation in accepting the submission of Mr. Bhushan that the High Court or this Court, in exercise of its powers of review can reopen the case and rehear the entire matter. But we must hasten to add that whilst exercising such power the court cannot be oblivious of the provisions contained in Order 47 Rule 1 CPC as well as the rules framed by the High Courts and this Court. The limits within which the courts can exercise the powers of review have been well settled in a catena of judgments. All the judgments have in fact been considered by the High Court in pp. 16 to 23. The High Court has also considered the judgment in S.Nagaraj v. State of Karnataka, which reiterates the principle that: (SCC p.619, para 19)



“19. Review literally and even judicially means re-examination or reconsideration. 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 wrongly in favour of favour 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.”

69. These principles are far too well entrenched in the Indian jurisprudence, to warrant reiteration. However, for the sake of completion, we may notice that Mr. Bhuxshan had relied upon *Board of Control for Cricket in India V. Netaji Cricket Club* and *Green View Tea & Industries.....*”

25. We have no quarrel with the proposition of law enunciated by the Supreme Court in the aforesaid **BCCI Vs.**



Netaji Cricket Club (Supra) and **Usha Bharati Vs. State of Uttar Pradesh and others** (supra). In both the judgments of the Supreme Court, it has been held that, while exercising the powers of review, the Court cannot be oblivious of the provisions contained in Order 47 rule 1 of the CPC.

26. As far as the instant case is concerned, the learned senior counsel, appearing for the petitioner, has failed to point out any mistake on the part of the Court including a mistake in the nature of undertaking which may call for a review of the order. He has also failed to point out any sufficient reason or error apparent on the face of the record which would warrant a review of the order. He has tried to argue the case on merits as if he was arguing an appeal.

27. It is well settled that a review proceeding cannot be equated with the original hearing of the case. A party is not entitled to seek review of a judgment merely for the purpose of re-hearing and fresh decision of the case. Review of an earlier order cannot be done unless the court is satisfied that the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

28. In **Col. Avtar Singh Sekhon Vs. Union of India and others** reported in **1980 (supp) SCC 562**, in paragraph



12, the Supreme Court has 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 vs. Sheikh Habib*, (1975) 1 SCC 674, this Court observed: (SCC p. 675, para 1)

“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.”

29. The scope of Order XLVII Rule 1 CPC, dealing with review of a judgment, has been succinctly stated by the Supreme Court in **Parsion Devi v. Sumitri Devi**, reported in (1997) 8 SCC 715, in paragraph 7, 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.*



(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.*”

30. The error, which is evident and has to be dictated by a process of reasoning, can hardly be said to be an error



apparent on the fact of the record.

31. In **Parsion Devi and others Vs. Sumitri Devi** (supra), the Supreme Court, in paragraph 9, has held as under:-

“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”.

32. In the case of **Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale**, reported in **AIR 1960 SC 137**, the Supreme Court, in paragraph 17, made following observations in connection with an error apparent on the fact of the record:-

“17.....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. As the above discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.....”

33. In **Lily Thomas v. Union of India**, reported in (2000) 6 SCC 224, the principle was reiterated by the Supreme Court with a caution that in exercise of power of review, the Court may correct the mistake but not to substitute the view. The mere possibility of two views on the subject is not a ground for review.

34. In the light of the settled legal position, as discussed above, having gone through the present review application, we find that no error apparent on the face of the record has been brought out by the review petitioner warranting review of the order dated 29.09.2013. A perusal of the review application would make it evident that the case is nothing but an appeal in disguise.

35. Thus, we are of the opinion that in the application,



under consideration, the petitioner has failed to establish that there was an error or a mistake apparent on the face of the record or there was such other material available with the petitioner, which, if not taken into consideration, would cause miscarriage of justice.

36. In view of the above discussion, the present review application is dismissed.

(Ashwani Kumar Singh, J)

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	AFR
CAV DATE	Nil
Uploading Date	16. 03.2019
Transmission Date	

