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

**Civil Revision No.6851 of 2017
Date of Decision:25.04.2019**

Rajesh Gulia

......Petitioner

Vs

Saurabh Shivhare & Anr.

....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Parunjeet Singh, Advocate and
Mr. Satish Rana, Advocate
for the petitioner.

Mr. Viren Jain, Advocate
for the respondents.

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RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 03.04.2017 passed by the Civil Judge (Jr. Divn.) Gurgaon (now Gurugram) vide which the application under Order 47 Rule 1 read with Sections 114/151 CPC for review of the judgment dated 28.07.2017 passed by the Civil Judge (Jr. Divn.) Gurgaon (now Gurugram) was dismissed.

[2]. Plaintiff/petitioner filed a suit for possession by way of specific performance. The suit was dismissed vide judgment

and decree dated 28.07.2015 by the Civil Judge (Jr. Divn.) Gurugram. Instead of filing appeal under Section 96 CPC, the petitioner filed an application for review against the judgment and decree of the trial Court on the ground that defendant No.1 had no title, therefore, the suit was hit by Section 17 of the Specific Relief Act, 1963. Further civil Court failed to appreciate the right of the purchaser against the person with no title in view of Section 13(d) of the Specific Relief Act. The application for review was filed against the findings of the trial Court. The trial Court dismissed the said application vide the impugned order. That is how the present revision petition came to be filed.

[3]. Learned counsel for the respondents has taken preliminary objection with regard to the maintainability of the revision petition.

[4]. Learned Senior counsel for the petitioner on the strength of observations made by the Courts in ***Rita Wangdi vs. Loden Tshering Bhutia, 2007(5) R.C.R,. (Civil) 183***; ***M/s Thungabhadra Industries Ltd. vs. The Government Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur, 1964 AIR (SC) 1372;*** ***Rekha Mukherjee vs. Ashis Kumar Dass, 2005(3) SCC 427***; ***Bhanu Pratap Singh vs. State of U.P. Through Collector Lucknow And others, 2013(4) CivilLJ 912***; ***P. Sudhakar Reddy vs. M.***

Chalapathi Reddy, 2007(2) Andh LD 56; ***Shiv Charan Singh vs. The State of Punjab & Ors., 2007(15) SCC 370***; ***Vinod Kapoor vs. State of Goa and Ors., 2012(4) R.C.R. (Civil) 748***; ***Kumaran Silk Trade (P) Ltd. vs. Devendra & Ors., 2006(8) SCC 555*** and ***Shanker Motiram Nale vs. Shiolalsing Gannusing Rajput, 1994(2) SCC 753*** contended that revision petition against the order dismissing the review application is maintainable as the Order 47 Rule 1(a) CPC permits an application for review being filed in "from a decree or order from which an appeal is allowed, but from which no appeal has been preferred". In view of Order 47 Rule 7 CPC, the impugned order is not appealable.

[5]. In the light of aforesaid precedents, this revision petition has been considered on merits.

[6]. The trial Court dismissed the suit after taking into consideration the pleadings and material observation of the trial Court would read as under:-

> "*the question that arises for determination is whether this receipt (17.6.2012) executed by defendant no.1 constitutes an agreement to sell entered by him in respect of suit property with the plaintiff, specific performance of which can be enforced. The receipt dated 17.6.2012, clearly refers to the fact that agreement to sell would be executed on 01.07.2012 and sale deed on 10.11.2012, therefore, I am of the view that receipt is not to be intended to be an agreement to sell, through it has all*

the features of an agreement to sell. It is captioned as receipt and is intended to be only a receipt. On 17.06.2012, no agreement was executed at all which is very evident from the recital of the evidence placed on case file. Receipt in question can be said to be a memorandum of tentative understanding between the parties that the agreement to sell would be executed on 01.07.2011. Moreover, PW2 Vikas Tokas has also stated that after meeting of parties at 32 milestone agreement to sell and thereafter sale deed was intended to be executed. He was a witness to the receipt in question.

It is evident from the pleadings of the plaintiff and the receipt which is produced for the decree for specific performance of so call receipt-cum-agreement that the consent of defendant no.2 was not obtained, therefore, the receipt is not enforceable in law. In view of the fact that defendant no.2 was not party to the receipt and defendant no.1 had no absolute title and right upon the entire suit property, therefore, the receipt is not enforceable under Section 17 of Specific Relief Act, 1963.

It is worthwhile to state here that several mails were exchanged between the plaintiff's associate Ankit Kapoor and defendant no.1 but no draft of agreement to sell was ever finalized. These were continued till 10.07.2012. Sale consideration was also not settled.

In view of the above discussed case law, I am of the considered view that token money of Rs.1,00,000/- paid to the defendant no.1 by the plaintiff, as per the facts of the present case, cannot be termed as advance sale consideration or earnest money as no enforceable agreement was ever executed between the parties to the suit. Therefore, I am of the view that receipt dated 17.6.2012 i.e. Ex.PW1/B cannot be said to be agreement to sell and cannot be enforceable in the law. Therefore, plaintiff is not entitled for specific performance of receipt dated 17.06.2012."

[7]. Perusal of the aforesaid observations recorded by the

trial Court would show that the Court has not accepted the receipt dated 17.06.2012 to be an enforceable agreement. The reasoning whether wrong or right could have been assailed in appeal as the same do not constitute any error apparent on the face of the record warranting interference in the review application. Defect in the reasoning (if any) cannot be said to be an error apparent on the face of the record. The power of review cannot be exercised for the correction of a mistake and the same cannot substitute the view expressed by the trial. The trial Court refused to entertain the review application on merits. Erroneous decision can only be assailed in appeal. The judgment and decree passed by the trial Court are appealable in nature. Even if, review is held maintainable against such judgment and decree of the trial Court, but the error on the record cannot be held to be an apparent error warranting interference in the review application.

[8]. There was no failure in exercise of jurisdiction on the part of trial Court, nor has it committed any jurisdictional error in dismissing the review application. The decision even if erroneous could have been challenged in appeal only. Decision of the trial Court in the main suit (even if) erroneous, the same could have been challenged only by appeal. The scope of review against such judgment and decree cannot be stretched

to remedy of appeal as the alleged error was not apparent on the face of the record, rather reasoning recorded by the trial Court was matter of appreciation by the appellate Court.

[9]. For exercising the powers under Order 47 Rule 1 CPC, the error has to be apparent on record. The 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. The mere possibility of two views on the subject is not a ground for review**.** Review is not rehearing of an original matter. The power of review cannot be over looked to confuse with the appellate power which enables the superior Court to correct all errors committed by a subordinate Court. Reference can be made to the ratio laid down in ***Kamlesh Verma vs. Mayawati and others, 2013(4) R.C.R. (Civil) 75***.

[10]. The powers under Article 227 of the Constitution of India cannot be enlarged by acting as an appellate Court or Tribunal. No review or re-evaluation of evidence is permissible upon which the lower Appellate has passed the order. Remedy of appeal is a substantive remedy, the same could have been availed by the aggrieved party.

[11]. In the present case, the judgment and decree passed

by the trial Court were appealable in nature. Even if the review is held maintainable against such judgment, after dismissal of the review application, the petitioner ought to have availed the remedy of appeal against original judgment and decree. Even if the order dismissing the review application is non-appealable in view of Order 47 Rule 7 CPC, still jurisdiction of the High Court under Article 227 of the Constitution of India cannot be invoked in such circumstances where the petitioner could have assailed the main judgment and decree before the appellate Court. Supervisory jurisdiction of the High Court under Article 227 of the Constitution of India can only be invoked when there is an error apparent on the face of the record. The findings based on no evidence has an error of law apparent on record. Error in appreciation of documentary evidence or in drawing inference cannot be said to be an error of law. Such error can only be corrected by a Court sitting as a Court of Appeal and under Article 227 of the the Constitution of India. Erroneous decision by a Court cannot be challenged by way of review petition

[12]. A review is by no means an appeal in disguise, whereby an erroneous decision is re-heard and corrected, but lies only in patent error. It could only be sought from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of

the applicant. Such important matter or evidence could not be produced by the applicant at the time when decree was passed. On account of some mistake or error apparent on the face of the record the error must be such which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. Even if the findings recorded by the trial Court were found to be erroneous, it would be no ground for review the same as that would be the function of the appellate Court. Right or wrong the judgment had become final so far as the trial Court was concerned. It could not have been reviewed by reconsidering the entire evidence with a view to find out any apparent error or justifying invocation of power of review. In the aforesaid context the ratio of ***Sadhana Lodh vs. National Insurance Company Ltd. & Anr., 2003(1) R.C.R. (Civil) 772; Kaushalya Devi and others vs. Bachittar Singh and others, 1960 AIR (SC) 1168***; ***Haridas Das vs. Smt. Usha Rani Banik & Ors., 2006(2) R.C.R. (Civil) 511***; ***Parsion Devi vs. Sumitri Devi, 1997(4) R.C.R. (Civil) 458*** and ***Smt. Meera Bhanja vs. Smt. Nirmala Kumari Choudhury, 1995(1) R.R.R. 499*** can be relied.

[13]. Having considered the controversy, I find that the findings recorded by the trial Court, even if found to be erroneous, the appreciation could have been done by the

appellate Court in statutory remedy of appeal, even if the review is held maintainable before the trial Court after dismissal of the same. The issue is not such which would compel the Court to exercise extra ordinary jurisdiction to interfere in the revisional jurisdiction under Article 227 of the Constitution of India, even if a remedy of appeal against the impugned order is barred under Order 47 Rule 7 CPC. This Court would not exercise jurisdiction as the issue is not extra ordinary in nature. Petitioner ought to have filed appeal before the appellate Court against the original judgment and decree of the trial Court in accordance with law.

[14]. For the reasons recorded hereinabove, I do not find any reasons to differ with the trial Court in dismissing the review application on merits. This revision is accordingly dismissed.

April 25, 2019 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No