

RA-CW-494 of 2017 in
CWP No.10798 of 1997

Satinder Singh Bajwa

Vs.

The Registrar, High Court of Punjab & Haryana & others

Present: Mr. S.S.Narula, Advocate, for the applicant/petitioner.

Ms. Munisha Gandhi, Senior Advocate, with
Mr. Karan Sachdeva, Advocate, for the respondents.

1. Senior counsel Ms. Munisha Gandhi appearing on behalf of the High Court, has strongly objected to the maintainability of the review application. She has dwelt on the well accepted parameters and restrictions in Order 47 Rule 1 of the Code of Civil Procedure, 1908. She submits that Charges 1(c), 1(f) and 1(g) have been noticed in the order in review dated 27.09.2017 passed by Justice P.B.Bajanthri [since transferred back to Karnataka High Court] not once, but twice over and reason has been attached however brief to conclude on both the aspects pressed by the applicant. After noticing the three charges, which have sustained in the report of the inquiring officer and, thereafter, punishment awarded as modified in appeal from double to single penalty, the Court declined interference in the inquiry and the punishment feeling the bar of judicial review in departmental proceedings relying on the judgment of the Supreme Court in R.R.Parekh Vs. High Court of Gujarat, 2016 (14) SCC 1. The Court refused to go into the nitty-gritty of the charge/s of travel to and fro on a false claim regarding the one way A.C bus journey from Delhi to Chandigarh on 19.08.1988 under Head 1(c) and double claim of daily allowance for Delhi-Chandigarh journeys on 18.10.1988 and 19.10.1988

falling under Head 1(f) and 1(g). The Court noticed the defence of the applicant-petitioner who failed to produce the bus tickets.

2. The issue; whether disciplinary authority could impose two penalties, was briefly touched and the Court held that the punishment order of the disciplinary authority merges with the order of appellate authority, whereby the penalty was modified i.e. withholding of four annual grade increments with cumulative effect, which in the opinion of the Court did not amount to enhancement of penalty. The original penalty also included punishment of reduction to the minimum of the time scale of pay of Assistant.

3. Ms. Gandhi relies on three judgments of the Supreme Court. The first of which is N. Anantha Reddy Vs. Anshu Kathuria & others, (2013) 15 SCC 534, wherein the Supreme Court in Para 9 held as follows:

“9. A careful look at the impugned order would show that the High Court had a fresh look at the question whether the appellant could be impleaded in the suit filed by the respondent No.1 and, in the light of the view which it took, it recalled its earlier order dated 08.06.2011. The course followed by the High Court is clearly flawed. The High Court exceeded its review jurisdiction by reconsidering the merits of the order dated 08.06.2011. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits.”

4. The other judgment is Kamlesh Verma Vs. Mayawati & others, (2013) 8 SCC 320. In Para 13, the Supreme Court observed as under:

“13. In a review petition, it is not open to the Court to re-appreciate the evidence and reach a different conclusion, even

if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court, in *Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. & Ors.*, [JT 2005 (7) SC 485], held as under:

“10...In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise”.

5. The principles of review have been summarized in Para 16 to read as follows:

“16. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words ‘any other sufficient reason’ has been interpreted in *Chhajju Ram Vs. Neki*, [AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poulose Athanasius & Ors.*, [(1955) 1 SCR 520], to mean ‘a reason sufficient on grounds at least analogous to those specified in the rule’. The same principles have been reiterated in *Union of India v. Sandur Mangnese & Iron Ores Ltd. & Ors.*, [JT 2013 (8) SC 275].

(B) When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it

cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

6. The third case cited is in Sasi (D) through LRs Vs. Aravindakshan Nair & others, (2017) 4 SCC 692. The Supreme Court in Paras 7, 8 & 9 held as under:

“7. In *Thungabhadra Industries Ltd. Vs. Govt. of A.P.*, AIR 1964 SC 1372, the Court while dealing with the scope of review had 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."

8. In *Parsion Devi Vs. Sumitri Devi*, (1997) 8 SCC 715, the Court after referring to *Thungabhadra Industries Ltd. (supra)*, *Meera Bhanja Vs. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 and *Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma*, (1979) 4 SCC 389, held thus:

"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".

9. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to be self-evident and is not to be found out by a process of reasoning. We have adverted to the aforesaid aspects only to highlight the nature of review proceedings.”

7. She submits that there is neither material error nor glaring omission or patent mistake or like grave error in the order in review. Relying on *Kamlesh Verma's* case (supra), she submits that 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. The review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. The mere possibility of two views on the subject is not a ground for review. In a review petition, it is not open to the Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto.

8. On the other hand, Mr. S.S.Narula, learned counsel for the applicant/petitioner, has relied on ruling of the Supreme Court in Shankar K. Mandal & others Vs. State of Bihar & others, (2003) 9 SCC 519 by referring to Paras 13 & 14 of the judgment. Those Paras are reproduced:

“13. If really there was no concession, or a different stand was taken, the only course open to the appellant was to move the High Court in line with what has been said in *State of Maharashtra Vs. Ramdas Shrinivas Nayakand & another*, (1982 (2) SCC 463). In a recent decision *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. & others*, (2002 AIR SCW 4939) the view in the said case was reiterated by observing that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before this Court to the contrary.

14. It is also not open to contend that a plea raised was not considered. In *Daman Singh and others etc. Vs. State of Punjab and others* (AIR 1985 SC 973) it was observed (in para 13) as follows:

"The final submission of Shri Ramamurthi was that several other questions were raised in the writ petition before the High Court but they were not considered. We attach no significance to this submission. It is not unusual for parties and counsel to raise innumerable grounds in the petitions and memorandum of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. The time of the superior courts is not to be wasted in enquiring into the question whether a certain ground to which no reference is found in the judgment of the subordinate court was argued before that court or not?"

9. In *Daman Singh*'s case, the point for consideration was where a ground argued was not considered then it should be open to the party aggrieved to draw the attention of the court by way of a proper application for review or clarification. I cannot see how this judgment helps Mr. Narula arguing the present review application to reopen the case de novo.

10. Having considered the arguments for and against the review, I am of opinion that this is not a case for review and the appropriate remedy of the petitioner would be to approach the Letters Patent bench in which appellate proceedings all questions of law and facts can be gone into. Therefore, at this stage, expression of any opinion on the merits of the case in this order has to be avoided so as not to prejudice either of the parties. All that this order means is that the conditions of review summarized by the Supreme Court in *Kamlesh Verma*'s case are not fulfilled in this case. It is well settled that review proceedings cannot be equated with the original hearing of the case.

11. Ergo, for these reasons, the instant review application is dismissed as I find no good reason to allow the application and re-hear the matter on merits.

08.07.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE