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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 22.01.2020

+ W.P.(C) 9337/2018

NEERAJ SHARMA Petitioner

Through: Mr. K.S. Wahi, Adv.

versus

THE UNION OF INDIA AND ORS. Respondents

Through: Mr. Anil Soni, CGSC with

Mr. Abhinav Tyagi, Adv. for UOI

Mr. Ajay Arora, Mr. Kapil Dutta & Mr. Anuj
Bhayana, Advs. for East DMC, North DMC &
South DMC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

D.N. PATEL, Chief Justice (*Oral*)

Review Pet.17/2020

1. Counsel appearing for the applicant (original petitioner) submitted that W.P.(C) 9337/2018 was preferred by this applicant and the same was disposed of *vide* order dated 31.10.2019. The said order is at Annexure RP-1 to this review petition. It is submitted by the counsel for the applicant certain arguments canvassed on behalf of the applicant (original petitioner) were not recorded in para 2 of the aforesaid order dated 31.10.2019.

2. Having heard the learned counsel for the applicant, we see no reason to entertain this review petition mainly for the reason that the arguments canvassed by the counsel for the petitioner were precisely recorded *vide* oral order dated 31.10.2019 passed by this Court in W.P.(C) 9337/2018, in the presence of counsel for the applicant (original petitioner) and dealt with.

The petitioner had, therefore, every opportunity, at that stage, to urge all submissions on which he desired an adjudication by this Court. The attention of the learned counsel for the petitioner on being drawn to this fact, his response was that he “*cannot control what the Court dictates*”. The submission merits rejection outright. Counsel cannot be permitted to argue in instalments, inviting judgments on certain submissions and, on the judgment being adverse, move for review, agitating further submissions. Such a practice, if permitted, would amount to doing away, completely, with the very concept of finality of judicial proceedings. Moreover, in the instant Review Petition, no error apparent on the face of the record is pointed out by the counsel for the applicant. Even if a judgment is erroneous, it cannot be re-heard and corrected and only apparent error can be corrected.

3. In the case of ***Haridas Das v. Usha Rani Banik*, (2006) 4 SCC 78**, the Hon’ble Supreme Court in Para – 12 to 18 held as under :

“**12. Order 47 Rule 1 reads as follows:**

“**REVIEW**

1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the 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 on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a

review of the decree passed or order made against him, may apply for a review of judgment of the court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

Explanation.—The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.

2. [Repealed by Act 66 of 1956.]”

13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it “may make such order thereon as it thinks fit”. The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing “on account of some mistake or error apparent on the face of the records or for any other sufficient reason”. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is

appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. This Court in Thungabhadra Industries Ltd. v. Govt. of A.P. held as follows: (SCR p. 186)

“[T]here 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. ... where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

14. In Meera Bhanja v. Nirmala Kumari Choudhury it was held that:

“8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in Aribam Tuleswar Sharma v. Aribam Pishak Sharma speaking through Chinnappa Reddy, J. has made the following pertinent observations:

‘It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by

him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.’ ” (SCC pp. 172-73, para 8)

15. *A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (a) 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; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.*

16. *In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p. 390, para 3)*

“It is true as observed by this Court in Shivdeo Singh v. State of Punjab there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record

is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

17. The judgment in Aribam case has been followed in Meera Bhanja. In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale were also noted: (AIR p. 137)

“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. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.” (SCR pp. 901-02)

18. It is also pertinent to mention the observations of this Court in Parsion Devi v. Sumitri Devi. Relying upon the judgments in Aribam and Meera Bhanja it was observed as under: (SCC p. 719, para 9)

“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'."

4. It is made abundantly clear, in the light of the aforesaid, that no ground is made out by the petitioner to invoke Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure, 1908.
5. In view of the aforesaid, this Review Petition is dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J

JANUARY 22, 2020/ns