

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

**RA-CR No.210 of 2019 in
CR No.7100 of 2019
DATE OF DECISION:10.01.2020**

Om Parkash

...Petitioner/contesting defendant No.1

Vs.

Sampat and others

...Respondents/contesting respondents

CORAM:- HON'BLE MR.JUSTICE LALIT BATRA

Argued by: Mr. Sumit Sangwan, Advocate
for applicant/respondent No.1-Sampat.

Mr. Sandeep Kumar Yadav, Advocate
for non-applicant/petitioner.

LALIT BATRA, J.

To begin with, it would be pertinent to mention here that previously CR No.7100 of 2019 titled “Om Parkash Vs. Sampat and others” was filed by Om Parkash (petitioner) impugning the legality of orders dated 21.05.2019 and 31.10.2019 rendered by trial Court, in terms of which, evidence of defendant No.1/petitioner was closed by Court order and further application under Section 151 CPC moved by him for leading additional evidence was dismissed, which civil revision petition was allowed by this Court, vide judgment dated 27.11.2019 and the concluding paras of said judgment read as under:-

“5. Under Article 227 of the Constitution of India, the powers can always be exercised to correct an error in the order of the trial Court which causes injustice to a party. In the present case, while closing the evidence of petitioner/defendant No.1 and further while rejecting his application for leading additional evidence, the trial Court has

shut a material piece of evidence which goes to the root of the matter and is required for just and proper adjudication of the case.

6. *In case Salem Advocate Bar Association, Tamil Nadu V. Union of India, 2005(3) RCR(Civil) 530 (SC), Hon'ble Supreme Court has held that in spite deletion of provisions of Order XVIII Rule 17-A CPC, the right to produce evidence at later stage by way of additional evidence, is not taken away, as the Court has always inherent power to exercise the jurisdiction for advancement of justice, in terms of provisions under Section 151 CPC.*

7. *Additional evidence is not to be evaluated at the stage of deciding application. However, a duty is cast on the Court to examine prima-facie the relevance of the material sought to be produced so as to conclude that application filed is bona fide and not to abuse the procedural law to harass the opposite party. To this effect, reliance can be placed on ruling "Rajesh Kumar versus Mangat Rai and others" 2012 (2) Civil Court Cases 712 (P&H).*

8. *Keeping in view ratio decidendi of above said rulings and in a given set of facts, it appears that if additional evidence, as detailed above, is allowed to be brought on record, it would be helpful for the trial Court for proper adjudication of matter before it as alleged Will Deed No.55 dated 18.07.1994 of Gordhan son of Harnam is matter in issue.*

9. *As a sequel to above discussion, instant civil revision petition is allowed. Impugned orders dated 21.05.2019 (Annexure P-2) and 31.10.2019 (Annexure P-1) rendered by trial Court, while ordering closure of evidence of petitioner/defendant No.1 and further declining his application for leading additional evidence, are set aside. Resultantly, application for leading additional evidence, as detailed above, moved by petitioner/defendant No.1, is allowed, but subject to*

deposit of costs of ₹5,000/- by petitioner/defendant No.1 in favour of District Legal Services Authority, Charkhi Dadri. It is made clear that only one effective opportunity be provided to petitioner/defendant No.1 to lead additional evidence, as detailed above, by the trial Court.

10. *Disposed of.*”

2. Applicant (respondent No.1-Sampat) has filed instant review application for review of judgment dated 27.11.2019, as detailed above, mainly on the ground that granting an opportunity to lead additional evidence to petitioner/defendant No.1 (Om Parkash) tantamounts to permit him to fill up the lacuna of his case and even otherwise sole motive of petitioner/defendant No.1 is to linger on the case on one pretext or the other. It is further contended that judgment dated 27.11.2019 was passed without giving any opportunity of hearing to applicant-respondent No.1 (Sampat), thus, serious prejudice has been caused to him and in this scenario, judgment dated 27.11.2019 is liable to be reviewed.

3. I have heard learned counsel for the applicant (respondent No.1-Sampat) as well as learned counsel for respondent-petitioner (Om Parkash) and have carefully gone through the record of the case.

4. Regarding aspect of controversy as to whether in a given situation, review of judgment is maintainable or not, in case “**Kamlesh Verma Versus Mayawati and others**” 2013(4) RCR (Civil) 75 (Supreme Court), it has been held that in the following grounds, review is 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.

Further, in the above said ruling, various situations have been described where review will not be maintainable and the said situations are enumerated as under;

- (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 re-heard 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.

5. In the instant review application, applicant (respondent No.1) has laid emphasis on the aspect that granting an opportunity to lead additional evidence to petitioner/defendant No.1 (Om Parkash) tantamounts to permit him to fill up the lacuna of his case and even otherwise sole

motive of petitioner/defendant No.1 is to linger on the case on one pretext or the other and the fact that judgment dated 27.11.2019 was passed without giving any opportunity of hearing to applicant-respondent No.1 (Sampat), thus, serious prejudice has been caused to him. However, above mentioned pleas do not come to the rescue of applicant-respondent No.1 (Sampat), as vide judgment dated 27.11.2019, this Court while taking into account entire scenario came to conclusion that while closing evidence of petitioner/defendant No.1 (Om Parkash) and further while rejecting his application for leading additional evidence, the trial Court has shut a material piece of evidence which goes to the root of matter and is required for just and proper adjudication of the case.

6. In view of above, since there is no discovery of new and important matter or evidence and the fact that there is no mistake or error apparent on the face of the record, there is no cogent reason to review the judgment dated 27.11.2019. Even otherwise, it is settled legal proposition that scope of review is very limited and under the guise of review, applicant (Sampat) cannot be permitted to reopen the entire case.

7. As a sequel to above said findings, instant application moved by applicant-respondent No.1 (Sampat) for review of judgment dated 27.11.2019 passed by this Court in CR No.7100 of 2019 titled “Om Parkash Vs. Sampat and others” being devoid of merits, is dismissed.

**(LALIT BATRA)
JUDGE**

10.01.2020
rimpal

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No