

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

MISC. CIVIL APPLICATION (REVIEW PETITION) NO.330/2021
IN
WRIT PETITION NO.2113/2020 (D) WITH
WRIT PETITION NO.1796/2020 (D) WITH
CRIMINAL WRIT PETITION NO.289/2020 (D)

- PETITIONERS :** 1. Union of India,
(Ori.Respondents) Through Secretary Ministry of Defence,
Government of India South Block,
Parliament Street, New Delhi – 110011.
2. The Chief of Army Staff,
Integrated HQ of Ministry of Defence,
(Army) South Block, Parliament Street,
DHQ Post Office, New Delhi – 110011.
3. Director General of Territorial Army,
Territorial Army Directorate, Integrated,
HQ of MOD (Army) “L” Block, Church
Road, New Delhi – 110001.
4. General Office Commanding in Chief,
(COC-in-C) Head Quarters Eastern
Command Fort Williams, Kolkatta.
5. General Officer Commanding in Chief
(COC-C) Headquarters, Southern
Command, Pune.

...VERSUS...

- RESPONDENT :** Col. Ivan Singh S/o Late Shri Kanwar
(Ori.Petitioner) Shamsher Singh, aged about 56 years
r/o Plot No.20, Manav Seva Nagar, Seminary
Hills, Nagpur through Arnold Singh
S/o Col. Ivan Singh, aged about 25 years,

r/o Plot No.20 Manav Seva Nagar,
Seminary Hills, Nagpur – 440006.

Shri Nandesh Deshpande, Assistant Solicitor General of India (ASGI for
petitioners/applicants
Shri Subodh Dharmadhikari, Senior Counsel assisted by Shri Akshay Sudame,
Advocate for respondent

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

Order reserved on : 08/07/2022
Order pronounced on : 14/07/2022

O R D E R (PER : AVINASH G. GHAROTE, J.)

1. The present application seeks a review of the judgment dated 07/05/2021. The parameters of review have been spelt out by the Hon'ble Apex Court in ***Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury (1995) 1 SCC 170*** as under :

“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 of India, this Court, in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389 : AIR 1979 SC 1047], speaking through*

Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

“It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909], 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.”

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not

require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* [AIR 1960 SC 137 : (1960) 1 SCR 890] wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

“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.”

In *Haridas Das Vs. Usha Rani Banik (Smt) and others*, (2006) 4 SCC 78, considering *Meera Bhanja* (supra), it has been held as under as under :

“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 [(1964) 5 SCR 174 : AIR 1964 SC 1372] 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."

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.”

2. Thus, from the above, the following can be culled out:

(a) 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 of the Code of Civil Procedure.

(b) The power of review can be exercised :

(i) 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;

(ii) where some mistake or error apparent on the face of the record is found, which mistake or error has to be self evident and must be such an error which must strike one on mere looking at the record. That is to say 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. 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; and

(iii) on any analogous ground.

But :

(c) It may not be exercised on the ground that the decision was erroneous on merits as a review is not an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. 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.

(d) It does not 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.

(e) 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.

(f) 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.

It would thus be apparent that unless a plea seeking review falls within the above parameters, a review shall not lie.

3. The present application for review has to be considered in light of the above parameters.

4. A bare perusal of the application seeking review would make it apparent that what is being sought is not a review but a rehearing for the reason that grounds are raised stating how the observations of this Court were incorrect, which cannot be grounds

for review but grounds for appeal. On this ground itself the application needs to be rejected.

5. Shri Nandesh Deshpande, learned ASGI however urges that the ground raised in para 19 of the application is a ground on which the judgment can be reviewed. We, therefore, asked him to point out to us the power of review vested in the Competent Authority, in the Army Act, 1950, to which he fairly concedes that neither the Army Act, 1950 nor the Rules framed thereunder confer any power of review upon the Competent Authority in respect of a power exercised under Rule 14 or 15 of the Army Rules, 1954.

6. We also enquired from the learned ASGI as to whether there was any material which would demonstrate the existence of any changed circumstances as was the plea raised in para 19 of the application, other than what was considered earlier, or any new material for that matter, or any material already in existence which was not considered, to which he states that the changed circumstances plea raised now is in respect of material which was already considered while exercising the power under Rule 14 of the

Army Rules. This being the admitted position, we do not see that any ground for review on this count is made out.

7. No other point is urged. The misc. civil application is therefore without any merit and is accordingly rejected. No order as to costs.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE, J.)

Wadkar