

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

Date of decision: 04th JULY, 2022

IN THE MATTER OF:

+ **CONT.CAS(C) 60/2022**

KINRI DHIR

..... Petitioner

Through: Ms. Shivani Luthra Lohia, Mr. Nitin Saluja, Mr. Anubhav Singh, Ms. Priyanka Prasanth, Advocates

versus

VEER SINGH

..... Respondent

Through: Mr. Manu Sharma, Ms. Gauri Rishi, Ms. Srishti Juneja, Ms. Garima Sehgal, Mr. Abhyuday Sharma, Advocates for R-1
Mr. Shubham Budhiraja, Advocate for R-2 & R-3

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

REVIEW PET. 141/2022 & CM APPL. 26165/2022

1. The instant review petition under Order XLVII read with Section 114 of the CPC has been filed against the Judgment of this Court dated 26.04.2022 rendered in CONT.CAS(C) 60/2022, whereby the contempt petition of the Petitioner herein/Wife was dismissed.

2. The facts, in brief, leading to the instant petition are as under:-

- i. The Petitioner herein/Wife filed a petition under the Guardian and Wards Act, 1890, and an application under Sections 18(1)(e) read with Sections 23 & 26 of the Protection of

Women from Domestic Violence Act, 2005 (*hereinafter referred to as the “DV Act”*).

- ii. *Vide* Order dated 09.11.2021, the learned Principle Judge, Family Court (South-East), Saket Courts, New Delhi, in G.P. No. 16/2021, directed as under:

“Regarding the maintenance which has been claimed by the Petitioner, it is an admitted fact that the rent of the serviced apartment along with all the amenities and bills are being provided by the Respondent till date to the Petitioner. Therefore, in addition to the facilities which have been provided to the Petitioner by the Respondent and which he will continue to provide, he will also provide to the petitioner a monthly maintenance of ₹1,00,000/- to the Petitioner and ₹1,00,000/- per month for the minor son from the date of filing of application till the decision of case on merits”

- iii. It is stated that MAT Appeal (F.C.) No. 2/2022 against the Order dated 09.11.2021 had been filed by the Petitioner herein/Wife, and *vide* Order dated 06.01.2022, this Court recorded Respondent No.1/Husband’s statement that *“the Respondent is complying in letter and spirit with the impugned order and shall continue to pay the amounts due as per the same”*.
- iv. It is stated that alleging consistent violations on the part of the Respondent No.1/Husband of the directions rendered by the Ld. Family Court in its Order dated 09.11.2021 as well as the undertaking given by the Respondent No.1/Husband, the Petitioner/Wife approached this Court by way of Cont.Cas(C) 60/2022.
- v. This Court, *vide* its Judgement dated 26.04.2022, dismissed the

contempt petition of the Petitioner herein/Wife and recorded the following observations:

“20. Material on record in the instant case discloses that the Respondent No.1 has been paying the requisite maintenance that has been directed by the learned Family Court in its Order dated 09.11.2021. In the said Order, the Respondent No.1 had been directed to pay the rent of the serviced apartment, along with all the amenities and bills, as well as to provide the Petitioner and the minor son a monthly maintenance of Rs.1 Lakh each from the date of filing of the Petition, i.e. 18.01.2021.

21. The Trial Court based its decision on the income and expenditure affidavit filed by the Respondent. The relevant portion of the income and expenditure affidavit reads as under:

27	<i>Whether your spouse is staying in the matrimonial home? If not staying at matrimonial home, relationship and income of the person with whom the spouse is staying? If staying in a rented accommodation what is the rent being paid?</i>	<i>Yes, staying at C-99, Defence Colony, New Delhi, Delhi – 110024</i> <i>Rent:-3,91,911/- P.M (Car parking, housekeeping and room service, Internet Access, Satellite TV, breakfast, 24 hrs reception assistance, AC maintenance, F & B service, 24 hrs running hot water and Linen laundry) Paid by the deponent Veer</i>
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		<i>Singh</i>
28	<i>Name and age of children from the marriage?</i>	<i>Shakyasimha Singh – 2 years</i>
29	<i>Who has the custody of the children?</i>	<i>Joint</i>
30	<i>Name and address of school(s) where the children are studying?</i>	<i>NA</i>
31	<i>Monthly expenditure of the children?</i>	<i>Total Exp Per month: 1,79,159/-</i>
32	<i>Details of expenditure/e on children</i>	
	<i>i) School/College fees</i>	<i>NA</i>
	<i>ii) Creche/Day care/After School care</i>	<i>NA</i>
	<i>iii) Books/Stationery</i>	<i>8,747/- P.M</i>
	<i>iv) Private Tuitions</i>	<i>NA</i>
	<i>v) Sports/Music/Theater</i>	<i>23,567/- P.M</i>
	<i>vi) Outings/summer camps/vacations</i>	<i>NA</i>
	<i>vii) Entertainment</i>	<i>NA</i>
	<i>viii) Pocket Money/Allowances</i>	<i>NA</i>
	<i>ix) Others</i>	<i>Paid by Deponent:</i> <i>Rent Apartment- INR 3,91,911/- P.M.</i> <i>Nanny Salary- INR 80,180/- P.M.</i> <i>Paid by Deponent's Company (Vana</i>

		<i>Ventures Ltd.): House Keeper & Cook Room Rent- INR 1,30,937/- P.M. House Keeper & Cook Salary-INR 76,744/- P.M.</i>	
		<i>Total:- INR 6,79,474/- Per Month</i>	
<i>Total Expenditure</i>		<i>Annual</i>	<i>Rs.1,06, 91,367/-</i>
		<i>Monthl y</i>	<i>Rs.8,90, 947/-</i>

22. A perusal of the income and expenditure affidavit shows that the Respondent No.1/Husband was spending Rs. 8,90,947/- per month for the purpose of maintaining the Petitioner/Wife and the minor son. It is pertinent to mention at this juncture that the Respondent No.1/Husband was residing with the Petitioner/Wife at the time when the income and expenditure affidavit had been filed. Subsequent to the filing of the income and expenditure affidavit, the Respondent No.1/Husband shifted out from the said premises. However, the expenditure has not been reduced despite the fact that the Respondent No.1/Husband has moved out from the premises. It has been submitted that Respondent No.1/Husband has been paying a sum of Rs. 4.5 lakhs towards the rent of the serviced apartment, which is more than the amount shown in the income and expenditure affidavit. The Respondent No.1/Husband is also paying a sum of Rs. 1,30,937/- per month towards the payment for the housekeeper and cook's room rent, and Rs. 76,744 per month for the payment of the salary of the housekeeper and the cook.

23. At this juncture, the controversy before this Court is restricted to whether non-payment of salary for the nanny would amount to contempt or not. The Order dated 02.03.2022 directing payment for various facilities and amenities, as well as payment to the nanny would be a matter of interpretation. The learned Senior Counsel appearing for Respondent No.1/Husband states that the nanny appointed at the time of filing of the income and expenditure affidavit was a medical specialist and had been appointed at a time when the minor son was not keeping good health. However, that position does not continue as of today. In wake of the changed circumstances, this Court is of the considered opinion that a sum of Rs.80,000/- is highly excessive for a nanny who has been employed to take care of a child.

24. The Order of this Court dated 28.01.2022 has recorded the submission that Rs.24 Lakhs have already been paid by Respondent No.1/Husband which would cover the period till 17.01.2022. The learned Senior Counsel appearing for the Respondent No.1/Husband has informed the Court that around Rs.4.5 Lakhs per month is being expended towards the rent of the serviced apartment, and that the Respondent No.1/Husband is also paying an additional Rs.1Lakh per month for the Petitioner/Wife's daily expenses like groceries. Therefore, a total of almost Rs.8 Lakhs is being paid by the Respondent No.1/Husband towards maintenance. Further, the Respondent No.1/Husband has also undertaken to pay for the services of the nanny and the home staff of the Petitioner/Wife.

25. In view of the same, this Court does not find any wilful disobedience on the part of the Respondent No.1/Husband in fulfilling the

directions given to him by the learned Family Court as well as this Court that would attract any penal consequences and, therefore, no contempt is made out against Respondent No.1/Husband.

26. *The petition is, therefore, dismissed along with the pending application(s), if any.*

27. *However, in the event that the serviced apartment at C-99, Defence Colony, New Delhi, is not provided to the Petitioner/Wife and the minor son, Respondent No.1/Husband is directed to provide an alternate accommodation of the same nature to the Petitioner/Wife. Furthermore, the Respondent No.1/Husband is directed to continue paying a sum of Rs.1 Lakh towards the Petitioner's daily expenses like groceries, etc. as stipulated in the Order of this Court dated 02.03.2022."*

vi. The Petitioner/Wife has now preferred the instant petition seeking review of the Judgement dated 26.04.2022.

2. Ms. Shivani Luthra Lohiya, learned Counsel for the Petitioner/Wife, submits that Judgement dated 26.04.2022 suffers from error of law and facts, and therefore, a review of the same is required. The learned Counsel for the Petitioner/Wife has recorded the following contentions with regard to the changes that must be made to the Judgement dated 26.04.2022:

A. It has been submitted that Judgement dated 26.04.2022 proceeded on the incorrect assumption that the Income Affidavit was filed at a time when the Petitioner/Wife and Respondent No.1/Husband were residing together, and that subsequent to the filing of the income and expenditure affidavit, the Respondent No.1/Husband shifted out of the said premises. The learned Counsel for the Petitioner states that the Respondent

No.1/Husband had moved to another floor of the rented premises around March/April, 2021, and that the Income Affidavit was exchanged before the Ld. Family Court on 31.07.2021 when the Respondent No.1/Husband had stopped residing with the Petitioner/Wife. It is further submitted that the admitted expenditure of Rs. 8,90,947/- in the Income Affidavit was solely toward the basic upkeep of the Petitioner/Wife and the minor child, and does not capture other amounts that Respondent No.1/Husband had been directed to expend, which was upwards of Rs. 10,00,000/-. The learned Counsel for the Petitioner/Wife states that the total expenditure on the maintenance of the Petitioner/Wife and the minor child is present on Page 24 of the Income Affidavit and amounts to Rs. 11,37,012/-.

- B. It has been submitted that the observation that the Respondent No.1/Husband is paying a sum of Rs. 1,30,937/- per month towards the payment for the housekeeper and cook's house rent, and Rs. 76,744/- per month for the payment of the salary of housekeeper and the cook, is incorrect as the Respondent No.1/Husband had stopped providing for the salary of the cook, housekeeper as well as the nanny, along with their rent. It has also been submitted that the material on record as well as the arguments made by Respondent No.1/Husband reveal that only Rs. 1,00,000/- was being paid for all the groceries and salaries of the staff, and no payment was done for the room rent of the staff.
- C. It has been submitted that the issue with regard to non-payment of maintenance on behalf of the Respondent No.1/Husband traverses beyond the non-payment of the salary for the nanny as

it has been exhibited time and again that the Respondent No.1/Husband has made various attempts to get the Petitioner/Wife evicted from the serviced apartment and, in wilful disobedience of the directions of the Ld. Family Court in the Order dated 09.11.2021, he has unilaterally reduced the amount that is to be paid for various facilities for the Petitioner/Wife and the minor child.

- D. It has been submitted that the nanny who was employed to take care of the minor child was not a medical specialist and that her salary of around Rs. 80,000/- was in tune with the fact that she had been hired by Respondent No.1/Husband so as to be on duty 24/7. It has further been submitted that the nanny was relieved of her services on 14.04.2022 due to Respondent No.1/Husband's refusal to pay for her salary, despite the Order dated 02.03.2022 whereby this Court had directed Respondent No.1/Husband to pay for the salary of the nanny.
- E. It has been submitted that the Respondent No.1/Husband has not paid any of the outstanding amounts of the staff as directed by this Court *vide* Order dated 02.03.2022 nor has he paid for the pending salaries of the domestic staff/house-staff. It has been submitted that the payment for the services of the nanny and the home staff is being borne by the Petitioner/Wife with the maintenance that she has been receiving for daily expenses, such as groceries. It has further been submitted that Rs. 8,90,947/- was the admitted expenditure being incurred by Respondent No.1/Husband for the basic upkeep of the Petitioner and their minor child, and that this amount was supposed to be in addition

to the various amounts being spent on groceries and other expenses.

F. It has been submitted that the direction rendered by this Court in its Judgement dated 26.04.2022 that *“in the event that the serviced apartment at C-99, Defence Colony, New Delhi is not provided to the Petitioner/Wife and the minor son, Respondent No.1/Husband is directed to continue to provide an alternate accommodation of the same nature to the Petitioner/Wife”*, is beyond the scope of contempt jurisdiction and merely fuels the attempts of Respondent No.1/Husband to evict the Petitioner/Wife from the said premises.

3. The learned Counsel for the Petitioner/Wife, submits that the Judgement dated 26.04.2022 has led to the perpetration of grave miscarriage of justice and is being weaponised by the Respondent No.1/Husband to oust the Petitioner/Wife from the rented premises at C-99, Defence Colony, New Delhi. She, therefore, prays for a review of the Judgement dated 26.04.2022.

4. Heard Ms. Shivani Luthra Lohiya, learned Counsel for the Petitioner, Mr. Manu Sharma, learned Counsel appearing for Respondent No.1, and perused the material on record.

5. The power of review is not to be confused with the appellate power which enable an appellate Court to correct all manner of errors committed by the subordinate Court. There are definitive limits to the exercise of power of review, and the Supreme Court has iterated the circumstances wherein the review of a judgement or an order can be sought. In Meera Bhanja (Smt.) v. Nirmala Kumari Choudhury (Smt.), (1995) 1 SCC 170, the Supreme Court had observed 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 *AribamTuleshwar Sharma v. AribamPishak 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.”**”*

(emphasis supplied)

6. The Apex Court in Haridas Das v. Usha Rani Banik (Smt.), (2006) 4

SCC 78, while considering the scope and ambit of Section 114 CPC read with Order 47 Rule 1 CPC, has observed as under:

“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.”

7. It is well settled that 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 (refer: Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137).

8. In order for a Court to exercise review jurisdiction, the error that is apparent on the face of the record must be such that it may strike one as an error by merely looking at the record and would not require a long-drawn process of reasoning. Therefore, the allegation that an error exists on the face of the record is not sufficient, and it must be accompanied with such an error that is palpable and evident without requiring the Court to go into elaborate arguments establishing the same. If the error is not self-evident

and detection thereof requires a long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order XLVII of the CPC. Review jurisdiction cannot permit for an erroneous decision to be “reheard and corrected”; it has a limited purpose and cannot be allowed to be an appeal in disguise.

9. In the instant review petition, it has been submitted that the Income Affidavit was filed by the Respondent No.1/Husband after he had shifted out of the floor on which Petitioner/Wife and the minor child resided, and therefore, the amount reflected in the said Affidavit did not capture the expenditure of the Respondent No.1/Husband on himself. This contention of the Petitioner cannot be sustained as the perusal of the Income Affidavit indicates that at point no. 27, the Petitioner/Wife has admitted that her spouse is staying at the matrimonial home, and that the rent that was being paid is Rs. 3,91,911/- per month. After the filing of the Income Affidavit it is stated that the Respondent No.1/Husband has shifted out of the floor where the Petitioner/Wife and the minor child were residing, and that the rent of the serviced apartment has increased to Rs. 4,50,000/- per month. Therefore, there is no error apparent on the face of the record and this does not have bearing on the final outcome of the contempt petition. Even if the Income Affidavit was filed after Respondent No.1/Husband moved out, it would not take away from the fact that the increased rent was being expended by the Respondent No.1/Husband.

10. It has further been submitted that the admitted expenditure of Respondent No.1/Husband, i.e. Rs. 8,90,947/-, in the allegedly incomplete income affidavit was the expenditure that was being incurred solely on the Petitioner/Wife and the minor child. Further, it has been stated that the amount of Rs. 1,79,159/- being spent on the minor child excluded the other

amounts that were also being spent. The learned Counsel for the Petitioner has stated that the total monthly expenditure of Rs. 11,37,012/- as stated on Page 24 of the Income Affidavit reflects the true amount that is being spent toward the maintenance of the Petitioner/Wife and the minor child. However, this submission also cannot be taken into consideration by this Court as the total monthly expenditure of Rs. 11,37,012/- as exhibited on Page 24 forms a part of the Statement of Expenditure of the Respondent No.1/Husband and includes the expenditure that is incurred by him on himself as well. It would be misplaced if the entire amount in the said segment of the Income Affidavit would be construed to be solely spent on the upkeep of the Petitioner/Wife and the minor child.

11. The learned Counsel for the Petitioner has made the submission that the Order of this Court dated 28.01.2022 wherein directions were given to the Respondent No.1/Husband to pay an advance amount of Rs. 1,00,000/- to the Petitioner/Wife for groceries, and for the same to be adjusted against the bills and/or salary of the domestic staff, is being utilised by the Respondent No.1/Husband to only pay for the groceries and salaries, and not for the room rent for staff, is fallacious. The argument that had been raised before the Court by the learned Counsel for Respondent No.1/Husband was that despite the direction to pay Rs. 1,00,000/- as a one-time payment to the Petitioner/Wife toward the expense of groceries, the Respondent No.1/Husband had continued to pay Rs. 1,00,000/- every month. Furthermore, delving into the issue as to whether due payment of the stipulated amounts for maintenance is being done by the Respondent No.1/Husband would amount to rehearing of the contempt petition, which a Court exercising review jurisdiction is not equipped to do.

12. With regard to the submission that the issue in the contempt case

traverses beyond the controversy of whether the non-payment of salary for the nanny would amount to contempt or not, this Court is of the opinion that the attempt of the Petitioner/Wife to re-agitate the issue of deprivation of the Petitioner/Wife of her maintenance by Respondent No.1/Husband by way of the instant review petition and the same is not in consonance with settled law. This also stands true for the submission of the learned Counsel for the Petition that the Respondent No.1/Husband has not paid for the services of the nanny and the home staff separately, and that the Petitioner/Wife is being constrained to pay for them out of the maintenance allocated for daily expenses, such as groceries. As has been elaborated above, review jurisdiction may not be exercised on the ground that a decision was erroneous on merits as the same would entail encroaching upon the province of a court of appeal. Therefore, this Court cannot re-open issues that have already been laid to rest and do not demonstrate any error apparent on the face of the record.

13. This Court recalls that during the course of the arguments in CONT.CAS(C) 60/2022, it had specifically been submitted by the learned Senior Counsel for the Respondent No.1/Husband and had been supported by the learned Senior Counsel for the Petitioner that the nanny in question was a medical specialist who had been hired keeping in the mind that ill-health of the minor child. The changed circumstances entail the health of the minor child improving and this Court remains firm in its opinion that the salary of almost Rs. 80,000 for the services of a nanny are unwarranted in light of these changed circumstances. The submission of the learned Counsel for the Petitioner that the nanny had been hired by the Respondent No.1/Husband does not sway the decision of this Court.

14. The learned Counsel for the Petitioner has relied upon the Order dated

09.11.2021 of the Ld. Family Court to submit that specific directions were given to ensure that the rented accommodation at C-99, Defence Colony, New Delhi, must be provided to the Petitioner/Wife. There is no specific direction that under all circumstances the Petitioner must be permitted to continue to reside at C-99, Defence Colony, New Delhi. The Order of this Court dated 28.01.2022 states that till the Order dated 09.11.2021, passed by the Ld. Family Court, subsists, the Respondent No.1/Husband shall pay for all such amenities as already being provided, including the rent of accommodation on the second floor at C-99, Defence Colony, New Delhi. It is contended that the Respondent No.1/Husband, along with Respondent No.2 and 3, are attempting to evict the Petitioner/Wife from the said rental accommodation. This submission of the Petitioner that the Petitioner must be permitted to reside at C-99, Defence Colony, New Delhi, even if the landlord desires to evict the Petitioner, cannot be accepted. CONT.CAS(C) 60/2022 cannot be used as a tool to take away the right of the landlord/owner of the rented premises, i.e. C-99, Defence Colony, New Delhi, to take steps to evict the tenant. CONT.CAS(C) 60/2022 arises out of a matrimonial dispute between the Petitioner/Wife and the Respondent No.1/Husband, and the landlord of the property bearing No. C-99, Defence Colony, New Delhi, cannot be made a party to the matrimonial dispute and his right cannot be taken away in a matrimonial proceeding.

15. It was only with a view to ensure that the Respondent No.1/Husband continued to provide for a shelter to the Petitioner/Wife that a direction was given to the Respondent No.1/Husband that he shall continue to provide for residential accommodation of the Petitioner herein/Wife. It is, therefore, cannot be said that the direction given by this Court in the Order dated 26.04.2022 is beyond the scope of contempt jurisdiction. Further, the

direction to provide for accommodation of the Petitioner/wife is only a reiteration of the Order dated 09.11.2021, violation of which is the subject matter of CONT.CAS(C) 60/2022.

16. In view of the above observations, the instant review petition is dismissed. All pending application(s), if any, stand disposed of.

JULY 04, 2022

Rahul

SUBRAMONIUM PRASAD, J.

