

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

R.V.W. No. 238 of 2022

With

CAN 1 of 2022

In

MAT 756 OF 2021

Reserved on : 20.07.2022

Pronounced on: 31.08.2022

Sri Probir Kumar Roy

...Applicant

-Vs-

State of West Bengal & Ors.

...Respondents

Present:-

Mr. Partha Chakraborty

Ms. Poulomi Dutta

...for the review petitioner
/applicant

**Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)**

Rajarshi Bharadwaj, J:

1. By this review application, the correctness of the order dated September 22, 2022 passed in MAT 756 of 2022 (Sri Probir Kumar Roy versus The State

of West Bengal & ors) by which the appeal preferred was dismissed has been questioned by the review petitioner/applicant.

2. The submission of the Learned Counsel for the petitioner/applicant is that the assessment of monthly fair rent of Saraswati Vidya Bhaban at Bose Pukur Road (hereinafter referred to as primary school) by the State/respondent authorities is highly prejudicial to the interest of the petitioner. The respondent authorities computed the rent of the school on the basis of rental rate of Bedia Danga Post Office, Tollygunge for the period from January 01, 1999 to December 31, 2013. The said post office is an old dilapidated building located more than seven kilometers away from the primary school whereas the primary school being in a good condition and situated at a strategic location nearby to the Rashbehari Connector is worth more. The fair rent fixed at Rs. 4,375/- per month (at the rate of Rs 7.08 per square feet for 618 square feet of total effective floor space) is grossly inadequate and unreasonable as the State did not assess the fair rent on the basis of the actual rate of rent prevailing in the locality where the primary school is located by drawing parallels with the rate of rent of other rented properties on the same road *i.e.* United Bank of India.

3. The Learned Counsel for the State submits that under the guise of review, the review petitioner cannot seek reopening of the entire case. The respondent authority, in pursuance of solemn order of the Hon'ble High Court, for fresh assessment of monthly fair rent conducted a spot verification and enquiry on the spot of the concerned primary school and took into account the monthly rent per unit area of the said school from the period January 01, 1994 onwards and time to time enhancement rate up to March 01, 2016. The petitioner was given an opportunity for hearing and he produced documents to establish fair rent which were taken into consideration. The respondent authority found the effective floor space to be 618 square feet and then proceeded to fix appropriate quantum of rent. The monthly rent of the primary school was settled at Rs.7.08 per square feet, higher than the rental rate

suggested by the petitioner i.e., the nearby bank paying Rs 4.50 per square feet as monthly rent.

4. The Supreme Court, in **Sow Chandra Kanta v. Sk. Habib**, reported in **1975 1 SCC 674** has made the following pertinent observation :

“A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel’s certificate, which should be a routine affair or a habitual step.”

5. The Hon’ble Supreme Court in **Lily Thomas v. Union of India** reported in **2000 6 SC 224** has expressed that :

“56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.”

“58. .. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law.”

6. In the matter of **Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. and Others** reported in **2005 6 SCC 651**, the Hon’ble Supreme Court held that :

“10.In a review petition it is not open to this Court to re-appreciate 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.”

7. Earlier also the Hon’ble Supreme Court in the matter of **Jain Studios Ltd. v. Shin Satellite Public Co. Ltd reported in 2006 5 SCC 501** had held as under:

“11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”

8. Having regard to the aforesaid facts, this Court finds that under the guise of review, the petitioner/applicant cannot be permitted to re-agitate and reargue questions which have already been addressed and decided.

Irrationality and perversity are recognised grounds of review. The petitioner has failed to show error apparent in the calculation of monthly fair rent by the State as well as relevant documents, materials to establish the perverseness in the computation of rent concerning the primary school at a rate of Rs. 7.08 per square feet. No record has been found stating that the rental rate of the school was valued higher than what was fixed or that the effective floor space was larger than what was recorded by the respondent authority. Therefore, as there is neither apparent error on the face of the record nor perverseness in the impugned order, no ground for review is made. Hence, the review petition and connected applications are accordingly dismissed.

[RAJARSHI BHARADWAJ, J]

[SHAMPA (DUTT) PAUL, J]

Kolkata
31.08.2023
PA (BS)