

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

RVWO/1/2023
IA NO: GA/1/2023

EVA SETH
VS
BANK OF MAHARASHTRA

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE KAUSIK CHANDA

Date : 6th December, 2023.

Appearance:
Mr. Rohit Banerjee, Advocate
Mr. S. S. Bhutoria, Advocate,
Mr. Altamash Alim, Advocate
....for petitioner.
Mr. Manabendra Thakur, Advocate,
Mr. Sourav Mondal,
..for Bank.

THE COURT:-

1. This is an application for review of a judgment and order dated December 10, 2019, passed by a Coordinate Bench, of which one of us (Koushik Chanda J.) was a member, whereby an appeal being APD 1 of 2017 arising out of CS No. 27 of 2009 was dismissed.
2. The review applicant filed a suit being CS No. 270 of 2009 against the respondent herein claiming the following reliefs:-

“a) Decree for Rs. 8,36,83,000/- (Rupees Eight Crores Thirty Six Lakhs and Eighty Three thousand only) as pleaded in paragraph 32 above;

b) Decree for Rs. 163,28,00,000/- (Rupees one sixty three Crores twenty eight lakhs only) as pleaded in paragraph (36) above;

c) Interest and interim interest on the decreed sum be allowed at the rate 12% per annum and/or at such rate as this Hon’ble Court may be deem fit and proper;

d) Decree directing the defendant to return to the plaintiff two (2) Reserve Bank of India Bond Nos. CA 5281 Calcutta dated 02.07.92 and CA 4052 Calcutta dated 27.05.91 respectively forthwith;

e) Decree directing the defendant to return to the plaintiff Life Insurance Policy bearing no. 85387992 for Rs. 25.000/- forthwith;

f) Decree directing the defendant to refund Rs. 19,76,000/- to export credit corporation;”

3. In the suit, the applicant herein made an application for final judgment and decree under Chapter XIII A of the Original Side Rules of this Court. By a judgment and order dated August 10, 2010, a learned Judge of this Court held that there appears to be a bona fide dispute both on the factual and the legal scores which cannot be conveniently addressed on an application under Chapter XIII A of the

Original Side Rules of this court which is on affidavits and by way of summary procedure. The learned Judge expedited hearing of the suit and passed consequential directions.

4. By a judgment and decree dated August 5, 2016, a learned Judge dismissed the suit as being barred by limitation.
5. The applicant herein carried such decree of dismissal in appeal by filing APD no. 1 of 2017. By the judgment and order under review, the said appeal was dismissed by a coordinate Bench as stated herein before. The Bench concluded as follows:- “for the reasons above, there was no merit in the plaint and, indeed, the plaint was liable to be rejected as being ex facie barred by limitation without calling for any trial. The appeal is utterly frivolous and devoid of any merit and the same is dismissed with costs.”
6. The present applicant filed a Special Leave Petition against the judgment and order dated December 10, 2019, which is under review in the present application. Such Special Leave Petition being SLP (c) no. 6677/2021 was dismissed by the Hon’ble Supreme Court by an order dated August 18, 2021. Subsequently, the present review application was filed.
7. Before coming to the grounds of review, I notice that five issues were framed by the learned Suit Court, the second of which was whether or not the suit was barred by the laws of limitation. The applicants claim against the bank in the suit arose in connection with banking

transactions that the applicant /plaintiff had with the bank. Such transactions admittedly took place between 1986 and 1995. The suit was filed in 2009.

8. Prior to filing of the suit the present applicant had filed a writ petition against the bank alleging that the bank had charged interest in excess of what was prescribed by the Reserve Bank of India. Being unsuccessful before the learned Single Judge, the applicant approached the Division Bench. The appeal was dismissed by a judgment and order dated June 24, 2003.
9. The Bank had thereafter initiated proceedings against the present applicant under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. Such proceedings were dismissed by the Debts Recovery Tribunal by an order dated December 18, 2008. The Bank's appeal against such dismissal order was dismissed by the Debts Recovery Appellate Tribunal.
10. At the hearing of the suit before the learned Single Judge, the present applicant, as plaintiff, argued that the Bank had wrongly not given credit to the plaintiff for amounts realized under Packaging Credit in Foreign Currency Scheme. The money actually belonged to the plaintiff (present applicant). The money was therefore held by the Bank in trust for the plaintiff. Referring to Article 10 of the Schedule to the Limitation Act, 1963, it was submitted on her behalf that the limitation period of three years for filing a suit would commence from

the date of the demand made. In the present case, the demand for refund was made by the plaintiff on May 16, 2008. Therefore, the suit having been filed in 2009, was within the period of limitation. It was further submitted that the plaintiff did not file the suit earlier because of pendency of the proceedings before the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal.

11. On behalf of the defendant it was submitted that neither before the Debts Recovery Tribunal nor before the Debts Recovery Appellate Tribunal the plaintiff made any counter claim which she could have done after the 2002 amendment to the Debts Recovery Act, 1993. Accordingly, the suit was barred by the principles of *res judicata*. It was also submitted on behalf of the defendant Bank that the suit was barred by the laws of limitation since the relevant transactions were for the period up to 1995 and the suit was filed in 2009.

12. The learned Single Judge held the suit to be barred by limitation observing, inter alia, as follows:-

“The second issue is taken up first for consideration for the sake of convenience. The claim for damages of the plaintiff is on account of banking transactions had between the parties for the period between 1986 and 1995. This is the pleading in the plaint and particularly paragraph 3 thereof. No document has been relied upon in the course of submissions by the parties to suggest that, the period of three years from 1995 stood

extended by acknowledgement of existence of jural relationship between the parties for a period extending upto a period of time so as to bring the date of the filing of the suit within 3 years from such extended date.

.....

The concept of trust introduced by the learned Advocate for the plaintiff does not assist the plaintiff. In the present case, the plaintiff had enjoyed credit facilities from the defendant. Therefore, the plaintiff did not keep any amount in deposit any amount with the defendant so as to claim that, the defendant had kept such money of the plaintiff in trust for the plaintiff. The defendant had advanced amounts to the plaintiff which the plaintiff was liable to repay. However, the liability of the plaintiff to repay any amount to the plaintiff stood adjudicated upon by the order of the Debts Recovery Tribunal dated December 18, 2008 and the order of the Debts Recovery Appellate Tribunal dated January 4, 2011 being Exhibit 'Z5'. The Tribunals have held that, the plaintiff need not pay any amount to the defendant on account of such loan transactions.

Since the plaintiff did not keep any money in deposit with the defendant, the question of Article 22 of the Limitation Act, 1963 coming into operation does not arise. Therefore, the effort of the plaintiff to save limitation through Exhibit

‘Z3’ being the letter of demand dated May 16, 2008 is of no assistance to the plaintiff.”

13. In the appeal preferred by the present applicant against the decree of dismissal of the suit, a coordinate Bench by the order under review, analyzed the plaint paragraph wise and came to the clear conclusion that the plaintiff’s suit is hopelessly barred by limitation. The Division Bench finally observed, inter alia, as follows:-

“To return to the narration in the plaint, paragraphs 20 to 22 of the plaint and the several sub-paragraphs thereunder refer to the proceedings instituted by the defendant bank before the DRT culminating in the dismissal thereof by an order of December 18, 2008. Paragraphs 23 to 30 of the plaint refer to the perceived illegalities committed by the bank, but it does not appear that any of such illegalities were committed at any point of time after 1997 or after the transactions between the parties came to an end in 1996 or at any point of time within three years prior to the institution of the present suit in 2009. Paragraphs 31 and 32 of the plaint set out the particulars of the plaintiff’s claims. Paragraph 33 pertains to the claim on interest. Paragraph 34 of the plaint refers to the notice of May 16, 2008 which is repeated again in paragraph 37 of the plaint and the reply of advocates for the defendant dated June 9, 2008. The essence of the reply is indicated at paragraph 34 of the plaint.

Advocates for the defendant had asserted that the defendant was advised not to deal with the notice of demand since the matter was sub-judice and pending before the tribunal. It may be recalled that it was only in December, 2008 that the bank's claim was dismissed by the tribunal.

Paragraphs 35 and 36 again refer to the perceived wrongful acts of the defendant without having any pointer as to any specific period of time. Paragraphs 38 and 39 are the formal and jurisdictional paragraphs. Paragraph 40, the last paragraph of the plaint, indicates the valuation.

Thus, it is evident, on a plain reading of the plaint, that the claim was ex facie barred by limitation and it was a complete waste of time for such a plaint to qualify to go to trial or witnesses be called in support of the claim. Nothing in paragraph 37 of the plaint makes out any exception to the general rule in the Limitation Act of 1963 for time to be excluded. Though it is asserted that the bank was in a position of a trustee, the nature of the relationship was that of a banker and constituent and the bank was never a trustee qua the plaintiff.

The suit was dismissed by a judgment and decree dated August 5, 2016. For similar reasons as indicated hereinabove, the trial Court found that the documents and the material relied upon could not overcome the bar of

limitation for the plaintiff's claim to be addressed or adjudged on merits.

For the reasons above, there was no merit in the plaint and, indeed, the plaint was liable to be rejected as being *ex facie* barred by limitation without calling for any trial. The appeal is utterly frivolous and devoid of any merit and the same is dismissed with costs.

APD No.1 of 2017 stands dismissed as above.”

14. We have already noted that the present applicant's Special Leave Petition preferred against the judgment and order under review was dismissed by the Hon'ble Supreme Court.

15. We have heard learned Advocate for the review applicant at length. There are 64 grounds of review enumerated in the memorandum of review. Naturally, learned Advocate could not make arguments beyond the scope of the grounds of review. All such grounds however pertain to the merits of the case or alleged procedural impropriety in the conduct of the appeal. The grounds do not establish that there is any error apparent on the face of the order under review. Indeed, having gone through the judgment and order under review, we do not find any error apparent on the face of the record as would warrant exercise of review jurisdiction under Order 47 Rule 1 of the Code of Civil Procedure .

16. It is established law that the jurisdiction to review an order can be exercised for correction of a mistake and not to substitute a view. Review cannot be treated as an appeal in disguise. The mere possibility of two views on the concerned subject is not a ground for review. As pointed out by the Hon'ble Apex Court in the case of ***Lily Thomas v. Union of India, AIR 2000 SC 1650***, an error contemplated in Order 47 Rule 1 C.P.C. must be such which is apparent on the face of the record and not an error which is to be fished out and searched. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. It must be a patent error and not merely a wrong decision.

17. In ***Parsion Devi v. Sumitri Devi reported at (1997) 8 SCC 715***, in paragraphs 9 and 10 of the reported judgment, the Hon'ble Supreme Court observed as follows:-

"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 limited purpose and cannot be allowed to be "an appeal in disguise."

10. Considered in the light of this settled position we find that Sharma, J. clearly over-stepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly

accept this appeal and set aside the impugned order dated 6.3.1997.””

18. In the case of **Suresh Kumar Jain & Ors. v. Madanlal Jain & Ors., reported at (2019)4CALLT233(HC)**, a Co-ordinate Bench of this Court, in paragraphs 11, 12 and 13 of the reported judgment, observed as follows:-

“11. In State of West Bengal & Ors -vs- Kamal Sengupta & Anr.(supra), the Hon’ble Supreme Court observed at paragraph 22 of the reported judgment as follows:

“22. The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires 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 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

12. In the said decision at paragraphs 25 to 30 the Hon’ble Supreme Court discussed its earlier decisions wherefrom, inter alia, the following points emerge:

- (i) That a decision is erroneous in law is no ground for ordering review. If the Court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it.

- (ii) The words “any other sufficient reason” must mean a reason sufficient on grounds at least analogous to those specified in Rule 1 of Order 47 of CPC.
- (iii) A review is by no means an appeal in disguise whereby an erroneous decision can be corrected.
- (iv) An error which is not self-evident and has to be detected by a process of reasoning, cannot 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.
- (v) In exercise of jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be reheard and corrected.
- (vi) There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected only by a higher forum, the latter can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.
- (vii) Order 47 Rule 1 CPC does not postulate a rehearing of the dispute on the ground that 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.

- (viii) The power of review may not be exercised on the ground that the decision under review was erroneous on merits. That would be the province of the Appellate Court. The 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.

13. The aforesaid propositions of law are also supported by the decisions of the Hon'ble Supreme Court in the cases of **Meera Bhanja –vs- Nirmala Kumari Choudhury, (1995) 1 SCC 170 and Dr. Somayajulu, Secretary, Diesel Loco Shed and South Eastern Railway House Building Cooperative Society Ltd.- vs- Attili Appala Swamy & Anr., (2015) 2 SCC 390.**”

19. In the case of ***Paramita Das v. Pranati Sarkar AIR 2004 CAL 22***, a Coordinate Bench of this Court echoed the same view that erroneous decisions cannot be re-heard and corrected by the Court in exercise of its jurisdiction under O. 47 r. 1 of the C.P.C. An erroneous decision cannot be categorized as an error apparent on the face of the record.

20. Keeping in mind the aforesaid principles of law, we have to hold that the applicant has been unable to make out any ground for exercise of jurisdiction for review under Order 47 Rule 1 C.P.C.

Having been unsuccessful in obtaining leave to appeal from the Hon'ble Apex Court against the judgment and order under review in this application, the applicant is seeking to reopen the merits of the case by way of the instant application. If one goes through the grounds of review, one will immediately see that the applicant is in effect and substance seeking to have the appeal re-heard on merits in the garb of a review application. This is not permissible in law.

- 21.** We find no reason to review the judgment and order dated December 10, 2019. There is no error apparent on the face of the record nor any other ground has been made out by the applicant which would persuade me to review the said judgment and order.

RVWO/1/2013 IA NO: GA/1/2023 is accordingly dismissed. There will be no order as to costs.

- 22.** Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities

(ARIJIT BANERJEE, J.)

(KAUSIK CHANDA, J.)