

ORDER

OD-5

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

RVWO/7/2023
with
APOT/116/2022
IA NO. GA/1/2023

ANIS FATMA BEGUM AND ANR.
VERSUS
THE STATE OF WEST BENGAL AND ORS.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
DATE : 24TH MARCH, 2022

APPEARANCE:

Mr. Bijoy Adhikary, Advocate
Mr. Ushananda Jana, Advocate
Ms. Susmita Adhikary,
Mr. Srijit Chatterjee Advocate
. . . for the petitioner.
Sk. Md. Galib, Sr. Advocate
Mr. Abu Siddique Mallik, Advocate
Ms. Tannishree Mukherjee, Advocate
....for the Board of Auqaf

The Court:- RVWO 7 of 2023 is an application filed by the review petitioner (respondent no. 1 in APOT 116 of 2022) seeking review of the order dated 27th of September, 2022 passed in APOT 116 of 2022 with IA Nos. GA 1 of 2022 and GA 2 of 2022.

There is a delay of 116 days in filing the review application, therefore, GA 1 of 2023 has been filed seeking condonation of delay. Having considered the explanation which has been furnished in the application and submission of learned counsel for the petitioner, we find that the delay has been properly explained and a good ground for condoning the delay is made out, therefore, GA 1 of 2023 is allowed and delay in filing the review petition is condoned.

Learned counsels for the parties are heard on the review petition being RVWO 7 of 2023.

Submission of learned counsel for the petitioner is that the judgment of the Hon'ble Supreme Court in the matter of **Board of Wakf, West Bengal and Another vs. Anis Fatma Begum and Another** reported in **(2010) 14 SCC 588** relied upon by this Court is mere obiter and in this regard, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **State of Andhra Pradesh (Now State of Telangana) vs. A.P. State Wakf Board and Others** reported in **2022 SCC OnLine SC 159**. He submits that the judgment of the Hon'ble Supreme Court in the case of **Golam Mustapha and Another** is a *per incuriam* judgment which ought not to have been relied upon by this Court. He also submits that remedy of writ cannot be curtailed.

Learned counsel for the respondent has submitted that there is no error apparent on the face of the record and the grounds taken in the review petition reveals that in the guise of the review, the review petitioner is attempting to reopen the entire matter requiring this Court to exercise the appellate jurisdiction. In support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court in respect of the scope of review jurisdiction.

We have heard the learned counsels for the parties and have perused the record.

Hon'ble Supreme Court in the matter of **Ratan Lal Patel vs. Dr Hari Singh Gour Vishwavidyalaya and Another** reported in **(2022) 6 SCC 540** has held that the review jurisdiction can be exercised in a case where there is error apparent on the face of the record.

In the matter of **Sivakami and Others vs. State of Tamil Nadu and Others** reported in **(2018) 4 SCC 587**, it has been held that the power of judicial review under Order 47 Rule 1 of the CPC is very limited and that the power of review is not to be confused with the appellate power and the review petition/application cannot be decided like a regular intra-court appeal.

In the matter of **Vijay Mallya vs. State Bank of India and Others** reported in **(2020) 20 SCC 100**, Hon'ble Supreme Court has held that attempt of rehearing in the guise of review cannot be permitted.

In the matter of **Shanti Conductors Private Limited vs. Assam State Electricity Board and Others** reported in **(2020) 2 SCC 677**, it has been settled that the scope of review is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

In the matter of **Perry Kansagra vs. Smriti Madan Kansagra** reported in **(2019) 20 SCC 753**, it has been held that an error which is required to be decided by a process of reasoning can hardly be said to be an error apparent on the face of record. To justify exercise of review jurisdiction, the error must be self-evident.

On examining the order of this Court dated 27th of September, 2022 passed in APOT No. 116 of 2022, we find that the judgment cited by both the parties have duly been considered by this Court and the issue has also been considered as to why statutory remedy should be adopted instead of invoking the writ jurisdiction. Hence, we find that there is no error apparent on the face of record requiring the review of the order of this Court, hence, the review petition is dismissed.

(PRAKASH SHRIVASTAVA, C.J.)

(RAJARSHI BHARADWAJ, J.)