

**ARUN FOTEDAR
V/S
JITENDER FOTEDAR AND ANOTHER**

Present: Mr. V.K. Shali, Senior Advocate with
Mr. Anmol Singh, Advocate
for the applicant-petitioner.

The present review application has been filed for review of the order dated 02.02.2023 by which, the civil revision petition was dismissed.

Learned senior counsel appearing on behalf of the applicant-petitioner argues that though several grounds were raised to challenge the impugned order dated 20.10.2022 (Annexure P-1) but all the grounds were not pressed during the hearing of the civil revision on 02.02.2023 inadvertently. Learned senior counsel for the applicant-petitioner submits that as he was to address the arguments on 02.02.2023 but as he was indisposed, he could not appear to address the arguments and as the request for adjournment was declined by this Court, the arguments were addressed by one of the counsel, who had signed the petition though, he was not fully prepared with the case due to which factor, required assistancy could not be extended to the court from petitioner's side.

Learned senior counsel appearing on behalf of the applicant-petitioner submits that not only proper assistant could not be rendered to the court at the time of hearing on 02.02.2023 qua not raising all the pleas to challenge the impugned order rather incorrect facts were projected, which led to the passing of the order dated 02.02.2023. Learned senior counsel submits that it was projected that the property in question was sold whereas, the same was gifted hence, the order dated 02.02.2023 was passed by taking

into consideration the incorrect fact, which needs re-consideration of the

said order dated 02.02.2023, hence, in order to do justice to the litigant, the order dated 02.02.2023, which is based upon incorrect facts, may kindly be recalled and he be allowed to address all the arguments to challenge the impugned order dated 20.10.2022 (Annexure P-1).

It may be noticed here that the order dated 02.02.2023 was passed in open Court and the same was dictated in the presence of the counsel, who had addressed the arguments. All the arguments raised were dealt with while passing the order dated 02.02.2023. The contention that the adjournment was declined on 02.02.2023, which made the counsel, who was not well prepared to address the argument, is unfortunate. This Court never stopped the counsel from raising any argument admissible and every argument raised during the hearing on 02.02.2023 was dealt with and the order was passed. It is for the parties concerned to raise all the arguments at the time of hearing as raised in the pleadings but the court cannot be blamed for not deciding the said issue once, the same was not pressed during the hearing.

A perusal of the order dated 02.02.2023, the review of which is sought, makes it clear that it was projected before the court that the property in question was sold whereas now, it is being contended that the same was a gifted property. It is also correct that one of the argument qua the maintainability of the suit keeping in view the provisions of Section 34 of the Specific Relief Act, 1963 was raised in the petition but the same was not addressed at the time of hearing on 02.02.2023. Though, the order dated 02.02.2023 was passed keeping in view the arguments raised during the hearing but in order to do substantial justice to the litigant, especially in the

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fact that the argument relating to Section 34 of the Specific Relief Act, 1963 was raised in the petition but was not pressed by the counsel during the hearing on 02.02.2023, which goes to the routes of the controversy, the review application is accepted keeping in view the facts mentioned hereinbefore and the order dated 02.02.2023 is recalled.

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As it has been contended that on 02.02.2023 adjournment was declined, which forced a counsel to address argument, though not prepared with the case, it will be in the fitness of things that the petition be placed before some other Bench after obtaining appropriate orders from Hon'ble The Chief Justice.

March 17, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE