

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**RA-CR No.147 of 2020 in
FAO No.2823 of 2013
CM No.10452-CII of 2020
Date of Decision: 30.01.2023**

Phullo & others

....Appellants

Versus

Noman & others

....Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Diwan S. Adlakha, Advocate,
for applicants-respondents No.1 & 2.

Mr. Balkar Singh, Advocate,
for the non-applicants-appellants.

Mr. Sandeep Suri, Advocate,
for respondent No.3-Insurance Company.

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MEENAKSHI I. MEHTA, J.

The applicants (arrayed as respondents No.1 & 2 in the appeal bearing FAO No.2823 of 2013 and here-in-after to be referred as 'the applicants') have preferred the instant Review application under Order 47 Rule 1 read with Section 114 CPC with the prayer to the review the order dated 15.01.2020 (Annexure A-1) passed in the afore-mentioned appeal and to pass an appropriate speaking order after hearing this appeal afresh. They (applicants) have also moved the application bearing **CM No.10452 of 2020** for seeking the condonation of the delay of 284 days in filing the Review Application.

2. The facts, in brief, leading to the filing of the present Review Application, are that the appellants-claimants had preferred the above-said appeal to assail the Award passed by learned Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhari on 19.12.2012, whereby the claim petition filed by them against the applicants and respondent No.3-Insurance Company under Section 166 of the Motor Vehicles Act, for seeking the compensation on account of the death of Balinder Singh son of Rati Ram, was dismissed. The Co-ordinate Bench allowed the afore-referred appeal vide order/judgment Annexure A-1 and granted compensation amounting to Rs.7,86,000/-, to them (claimants). The applicants have moved this Review Application, while averring that the accident in question reportedly took place on 10.01.2011 whereas the Tractor bearing Registration No. HR -02W-6462, alleged to be involved in the said accident, had been taken into possession by the police officials of PS Sarsawa, District Saharanpur on 01.01.2011 and was kept at the said Police Station up to 20.01.2011 but the Court ignored Annexures A-3 and A-4 (exhibited as R7 & R8 respectively) and also the depositions as made by RW-1 Constable Vipin Kumar, in this regard and had, thus, wrongly allowed the appeal.

3. I have learned counsel for the applicants-respondents No.1& 2 and learned counsel for the non-applicants/appellants as well as learned counsel for respondent No.3 on the instant Review Application and also on CM No.10452 of 2020 and have perused the file carefully.

4. Learned counsel for the applicants has contended that the above-said delay in filing the Review Application is not intentional and

rather, the counsel engaged by the applicants earlier, did not file the same within the prescribed period of limitation and therefore, the afore-said delay deserves to be condoned.

5. However, the above-raised contention is devoid of any force because it was entirely for the applicants to keep track of the Review Application intended to be filed by them and to enquire from their lawyer regarding the filing of the same and also qua the proceedings going on in the Court in respect thereof. It being so, mere plea regarding the afore-alleged lapse on the part of the counsel, does not suffice at all to afford any justifiable or plausible ground to condone the above-mentioned delay and hence, CM No. 10452 of 2020 is hereby dismissed.

6. Since learned counsel for the parties have also addressed the arguments in the Review Application, therefore this Court deems it appropriate and expedient to advert to the discussion on the merits thereof while presuming it for the sake of arguments only that the same has been filed within the prescribed period of limitation.

7. Learned counsel for the applicants has contended that while deciding the afore-said appeal, the Co-ordinate Bench has not taken the above-referred clinching evidence into consideration which shows that on the date of the alleged accident, the offending vehicle was in the possession of the police and moreover, the present Review Application is perfectly maintainable in view of the observations made by Hon'ble Supreme Court in **S.Bagirathi Ammal vs. Palani Roman Catholic Mission 2008 (1) RCC (Civil) 290.**

8. Per contra, learned counsel for the appellants-claimants has argued that the pleas set-forth by the applicants in this Review Application, are beyond the scope of the provisions as contained in Section 114 and Order 47 Rule 1 CPC and hence, the instant application be dismissed.

9. Explicitly, by way of filing the present Review Application, the applicants have prayed for hearing the afore-said appeal afresh and thereafter, to pass an appropriate order while re-appreciating the above-discussed evidence as led before the Tribunal but it is worth-while to mention here that re-appreciation and re-evaluation of the evidence can, by no stretch of imagination, be construed to be intent and purpose for enacting the afore-said provisions. The observations made by the Apex Court in **S.Bagirathi Ammal (supra)**, are not of any avail to the applicants because the facts and circumstances of the above-cited case are quite distinguishable from those of the instant one as in the afore-noted case, the tenant had obtained the decree directing the landlord to sell the site to him and had also paid the consideration but before the execution of the sale-deed in pursuance thereof, the Madras City Tenants Protection Act, 1921 had been amended whereby the buildings of the Religious Institutions were exempted from the provisions of the Act and the landlord had filed the review petition and then, it had been held that the proceedings would come to an end upon the execution of the sale-deed and the Court could review the decree if the error came to its notice whereas in the present case, as mentioned earlier, the applicants have prayed for re-hearing the appeal and deciding the same afresh by re-appreciating and re-evaluating the evidence.

10. Rather, the case in hand is squarely covered by the verdict rendered by the three Judges' Bench of Hon'ble Supreme Court recently in **S. Madhusudhan Reddy versus V. Narayana Reddy and Others, Civil Appeals No.5503-04 of 2022 arising out of Petitions for Special Leave to Appeal (Civil) No.9602-03 of 2022 decided on 18.08.2022** to the effect that *"it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal and it is well settled that in exercise of review jurisdiction, the Court cannot reappreciate the evidence to arrive at a different conclusion even if two views are possible in a matter"*. In the light of these observations, it becomes crystal clear that the prayer made by the applicants is beyond the ambit of the above-discussed provisions which confer the review jurisdiction upon the Court.

11. As a sequel to the fore-going discussion, it follows that the instant Review Application, being *sans* any merit, deserves dismissal. Resultantly, the same stands dismissed accordingly.

January 30, 2023.
Seema

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes