

28.03.2024
SL No.7
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**RVW 92 of 2024
With
IA No: CAN/1/2024
Jai Badrinath Niketan Pvt. Ltd. & Anr.**

**Versus
IDFC First Bank Ltd.
IN
C.O. 4004 of 2023
Jai Badrinath Niketan Pvt. Ltd. & Anr.
Versus
Mandipa Properties Private Limited & Ors.**

Mr. Krishnaraj Thaker,
Mr. Suvranil Saha,
Mr. S. Sanyal

....for the petitioners.

Mr. Pranit Bag,
Mr. Anooj Kr. Mishra
Mr. Rahul Poddar,
Mr. Dip Jyoti Chakraborty,
Mr. Amit Parekh,
Mr. M. Rahaman

.....for the defendant No.10/Applicant.

Affidavit of service filed on behalf of the
petitioners is taken on record.

This is an application for review of the
judgment and order dated 12th March 2024 passed
by this Court in IA No. CAN 1 of 2023 in connection
with C.O. No. 4004 of 2023.

An application being CAN 1 of 2024 is
preferred for stay of operation of the impugned order
under review till the disposal of the instant review
application.

Learned counsel appearing on behalf of the opposite party raised strong objection on the ground that the instant review application is not maintainable. Let the matter regarding the maintainability of the instant review application is taken up for hearing.

Heard Mr. Thaker appearing on behalf of the petitioners also heard the learned advocate Mr. Pranit Bag appearing on behalf of the opposite party No. 10.

Mr. Thaker submits that this Court vide order dated 12th march, 2024 has framed first issue that whether the impugned order was passed ex-parte whwithout ether serving proper and effective notice upon the respondent No. 10.

Mr. Thaker submits that while disposing the issue this Court has not finally concluded the decision that whether the application for review is barred under the limitation. He has pointed out the paragraph No. 8 and paragraph No.9 wherein the argument of Mr. Thaker was recorded by this Court. He also pointed out that in paragraph No. 12 this Court has held that the first ground for recalling of the impugned order may not appears to be reasonable.

By citing the observation of this Court Mr. Thaker argued that when this Court has observed that the application for recalling is barred by

limitation, the Court has no jurisdiction to entertain the merit of the recalling application. He submits that the error as mentioned in the review application is error apparent so, it can be rectified by a review application.

In support of his contentions he cited a decision of a Co-ordinate Bench of this Court in ***Abhijit Tea Company Pvt. Ltd. Vs. Terai Tea Company Pvt. Ltd. & Ors.***, he referred the paragraphs 85, 86 and 87, they are set out below:

“85. The question of error apparent on the face of record was also considered in the judgment and decision in the case of Panchanan Bhowmick V. State of West Bengal and Makhanlal Koley Vs. State of West Bengal, reported in (1987) 1 Cal HN 343. In the aforesaid decision, the land in question requisitioned under the 1948 Act were subsequently requisitioned. The L.A. Collector made his awards on 21st December, 1980. The petitioner made reference against the awards. The Additional special Land Acquisition Judge by his judgement dated 14th Nov. 1984 enhanced the market value of the lands and ordered payment of compensation with interest at 6% p.a. and statutory allowance at the rate of 15%. Review application was filed before the Special Land Acquisition Judge on the ground that the Court committed an error apparent on the face of the record in not-awarding statutory allowance and interest at the rates

provided respectively under S. 28(2) and S.28 of the Land Acquisition (Amendment) Act of 1984, which had come into force on the 24th Sept. 1984 that is, before the date of the judgment. The said review application having been dismissed by the Judge, the petitioners came up in revision. The question was whether by not awarding the statutory allowance and the interest in accordance with the amended provisions of the Land Acquisition Act, the Court below had committed an error apparent on the face of the record. On behalf of the respondent it was argued that the Act of 1948 as amended in 1978 incorporated the provision of Section 23(2) of the Land Acquisition Act as it stood before the amendment, subsequent amendment in Section 23(2) of the Land Acquisition Act can have no effect in determining compensation for land acquired under Section 4 of the Requisition, and Acquisition Act”.

86. “When a Court did not apply the provisions of an enactment which on the face of it would apply to a case, same would be a mistake or error apparent on the face of the record. But a mere error of law is not a ground for review only a manifest error would be a ground for review”.

87. “As observed by Supreme Court, an error apparent on the face of record cannot be defined precisely or exhaustively there being an element of indefiniteness inherent from its very

nature. It must be left to be determined judicially on the facts of the each case. In this connection, I may take note of the judgment and decision in the case of Hari Vishnu V. Ahmed Ishaque reported in MANU/SC/0095/1954 : [1955] 1 SCR 1104. In the aforesaid decision the Supreme Court in paragraph 23 of the said judgement inter alia held and observed as follows – “when does an error cease to be mere error, and become an error apparent on the face of the record ? Learned Counsel on either side were unable to suggest any clear cut rule by which the boundary between the two classes of errors could be demarcated. Mr.Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in Batuk V. Vyas V. Surat Borough Municipaly, MANU/MH/0088/1953 : AIR 1953 Bom133, that no error could be said to be apparent on the face of the record if it was not self-evident, and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very

nature, and it must be left to be determined judicially on the facts of each case.”

He also cited the decision of Hon’ble Apex Court in ***Noharlal Verm Versus District Cooperative Central Bank Limited, Jagdalpur*** reported in ***(2008) 14 SCC 445***, he referred the paragraphs 31 and 32 is set out below:

“31. But even otherwise, according to the counsel, if the application was nnot within the period of limitation, the so-called concession would neither bind the Bank n or invest jurisdiction or power in the authority to entertain such application which was barred by limitation. In other words, according to the coussel, the concession was against the provision of law, which would not bind the Bank.

32. Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a Court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits”.

By citing those decisions, Mr. Thaker submits that the Hon’ble Apex Court has held that if suit, appeal or application is barred by limitation, a Court or an adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.

He further submits that the first point has determined in favour of the petitioners by this Court in impugned order under review but the Court has erroneously proceeded to determined the merit which is not permissible under the law laid down by the Hon'ble Apex Court in **Noharlal Verma**. Mr. Thaker further submits that the proposed error, is error apparent on the face of the Order; thus the appropriate remedy is only available through a review application. He submits that the instant review application is quite maintainable and till the disposal of the instant review application an order of stay may be passed.

Learned counsel Mr. Bag appearing on behalf of the opposite party No. 10 submits that the proposed ground for review is not maintainable. He submits that the Hon'ble Apex Court in several decisions has observed that the available grounds for review in several decisions.

Firstly, he cited the decision the Hon'ble Apex Court in **Shanti Conductors Private Limited Versus Assam State Electricity Board & Others** reported in **(2020)2 SCC 677**, he referred the paragraph 25 is set out below:

“25. Insofar as the other submissions of Dr. Singhvi that the 1993 Act is retroactive in nature and further amount due at the time of the commencement of the Act ought to

attract interest of the 1993 Act, all these submissions have been considered on merits. The scope of review is limited and under the guise of review, the petitioner cannot be permitted to re-agitate and reargue the questions, which have already been addressed and decided. The scope of review has been reiterated by this Court from time to time. It is sufficient to refer to the judgment of this Court in Parsion Devi-v. Sumitri Devi, wherein in para 9 the following has been laid down: (SCC p.719)’.

Secondly, *Perry Kansagra Versus Smriti Madan Kansagra reported in (2019) 20 SCC 753, wherein* he referred the head notes following para-15 as follows:

Principles relating to exercise of review jurisdiction can be summed up as under:

- (i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.*
- (ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.*

- (iii) *Power of review may not be exercised on the ground that the decision was erroneous on merits.*
- (iv) *Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.*
- (v) *An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.*

Inderchand Jain v. Motilal, (2009) 14 SCC 663: (2009) 5 SCC (Civ) 461, relied on

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 a limited purpose and cannot be allowed to be “an appeal in disguise”.

Parsion Devi v. Sumitri Devi, (1997) 8SCC 715, relied on

The words “sufficient reason” in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit”.

Thirdly, ***S. Murali sundaram Versus Jothibai Kannan and Others***, he referred the paragraph 14 which is set out below:

“14. At the outset, it is required to be noted that by the impugned judgment and order the High Court has allowed the review application filed under Order 47 rule 1 CPC and has set aside the judgment and order dated 03.03.2017 passed in Writ Petition No. 8606 of 2010. While allowing the review application the High Court has observed and held that the earlier judgment and order dated 03.03.2017 in Writ petition No. 8606 of 2010 was erroneous. Therefore, question which is posted before this Court for consideration is whether in the facts and circumstances of the case the High Court is justified in allowing the review application filed under Order 47 Rule 1 CPC and setting aside the reasoned judgment and order passed in main writ petition?”

Fourthly, ***Shri Ram Sahu (Dead) Through Legal Representatives & Ors. Versus Vinod Kumar Rawat & Ors*** reported in ***(2021) 13 SCC 1***, he referred the paragraph 10 which is set out below:

“10. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said section imposed any prohibition on the court for exercising its power to review its decision. However, an order can be reviewed by a court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power be exercised in the guise of power of review”. and,

Fifthly, *S. Madhusudhan Reddy Versus V. Narayana Reddy and Other*, he referred the paragraph 31 which is set out below:

“31) As can be seen from the above exposition of law, 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. A judgment can be

open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance can only be corrected by exercising review jurisdiction. Yet another circumstance referred to an Order XLVII Rule 1 for reviewing a judgment has been described as “for any other sufficient reason”. The said phrase has been explained to mean “a reason sufficient on ground, at least analogous to those specified in the rule”.

By citing those decisions Mr. Bag submits that the impugned order under review has been specifically dealt with the issues and the argument

as advanced by the parties. The Hon'ble Apex Court in several decisions has held that there is very limited scope of review under Order 47 Rule 1 of CPC and the instant ground for review is not maintainable under the scope of the review as envisaged by the Hon'ble Apex Court. He submits that the instant review is not maintainable and liable to be dismissed.

Heard the learned advocates perused the ground for review also heard the argument of learned advocate for the petitioners Mr. Thaker has argued only on the point that the point of limitation was considered and decided by this Court in favour of the petitioners, but at the time of passing the impugned order, the same has not answered properly. He submits specifically that this is the only error apparent on the face of the record. The same error can only be corrected by filing a review not the appeal. He further submits that the learned Court has answered the first point in favour of the petitioners but has not passed a specific order to that effect that the prayer for recalling is barred by limitation. He submits that this is an error apparent on the fact of the record. So, it may be corrected by this review application.

Mr. Bag submits that the observation of this Court in the impugned order is quite correct and passed after appreciation of arguments of both the

parties and has specifically disposed of the point in paragraph No. 12. So, he argued that this point can only be agitated in an appeal against the instant order not by the application for review.

Let me consider whether the point of limitation was at all considered by this court in the impugned judgment or not. It appears that the effective service of notice upon the respondent No. 10 was in question before this Court. On that point this Court has pointed out the argument advanced by the parties and in paragraphs 11 and 12 this Court has decided the first point regarding justifiability service of notice upon the opposite party No. 10 and its effect thereof in the recalling application.

Mr. Thaker submits that this point though has been decided in their favour but necessary order has not been passed so this must be an error apparent on the face of the record.

On perusing the paragraphs 11 and 12 of the impugned order it appears to me that this court has decided the issue by passing the specific order if the matter is now to be considered by virtue of this review application, the matter has to be decided on merit again. A review application filed under Order 47 Rule 1 CPC cannot empower a Court to exercise his inherent jurisdiction so as to interpret its own order. I am disagree with Mr. Thaker on the point

that the proposed grounds for review is error apparent on the face of the order.

The argument that the finding of this court should have otherwise... can only be answered in an appeal but not in a Review. This Court cannot go into the merit of the matter again. So in my view the point which was raised in the grounds of the review application appears to me not maintainable by virtue of the decision of Hon'ble Apex Court in ***S. Madhusudhan Reddy Versus V. Narayana Reddy and Other.***

Considering the same, I find no justification to entertain the instant review application. Accordingly, the review application is not maintainable and it is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)

