

22nd March, 2024
(D/L No.03)
(SKB)

RVW 56 of 2023
In
C.O.1193 of 2022

Kanailal Bera and others
Versus
Rabindra Nath Bhunia

Mr. Buddhadev Ghosal,
Mr. Subrata Santra
... for the petitioners.

Mr. Dyutiman Banerjee,
Mr. Salil Kr. Maiti
... for the opposite party.

1. The receipt showing payment of costs as filed by learned counsel for the review petitioners is taken on record.
2. Heard.
3. The instant review petition has been filed with a prayer for recalling the order dated 30th June, 2023 as passed in C.O.1193 of 2022 whereby and whereunder the said revisional application was dismissed being infructuous in view of the submissions made by learned counsel for the petitioners.
4. In support of the instant review petition, Mr. Ghoshal, learned counsel appearing for the review petitioners submits before this court that in C.O.1193 of 2022 the impugned order of dismissal as passed by the executing court regarding

maintainability, executability, discharge and satisfaction of execution proceeding has been challenged. It is submitted by Mr. Ghoshal that though during the pendency of the said revisional application being C.O.1193 of 2022, execution case as pending before the executing court has been disposed of on full satisfaction but, in the event, the said C.O.1193 of 2022 is heard on merit and, in the event, such revisional application is allowed, there is every scope on the part of the present review petitioners to apply for restitution of possession under Section 144 of the Code of Civil Procedure.

5. It is further contended by Mr. Ghoshal that probably out of misconception or by mistake, a wrong submission was made by the erstwhile advocate of the present review petitioners on 30th January, 2023 in connection with C.O.1193 of 2022 and therefore, the instant review petition may be allowed by recalling the order of dismissal dated 30th January, 2023 as passed in C.O.1193 of 2022 so as to enable the present review petitioners to place their case as made out in C.O.1193 of 2022.
6. Per contra, Mr. Banerjee, learned counsel for the opposite party submits before this court that while

praying for review, none of the grounds as mentioned in Order XLVII Rule 1 of the C.P.C. could be satisfied by the petitioners and, thus, the instant review application is liable to be dismissed. It is further submitted by Mr. Banerjee that this court ought not entertain the instant review petition since the learned advocate for the review petitioners has not taken 'no objection' from the erstwhile learned advocate in view of the reported decision of ***Tamil Nadu Electricity Board and another Vs. Mr. N. Raju Reddy and others [AIR 1997(9) SCC 736]***.

7. For effective adjudication of the instant *lis*, this court proposes to have a glance to the provisions of Order XLVII Rule 1 of the C.P.C. and the same is reproduced hereunder in verbatim:

"1. Application for review of judgment.—(1) Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order

made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2)

Explanation.—"

8. on perusal of the aforementioned legislative provision, it, thus, appears to this court that it is the legislative intent is that a review of a judgment and/or order can be sought for on the following grounds:

- a) On account of discovery of new and important matter or evidence.
- b) On account of some mistake or error which is apparent on the face of the record and
- c) For any other sufficient reason.

9. Since the C.O.1193 of 2022 has been filed challenging the order of dismissal of an application under Section 47 of the C.P.C. by the judgment-debtors regarding the executability and/or discharge and/or satisfaction of a decree, in considered view of this court, the aforementioned civil revision is still maintainable even if decree is satisfied in execution, since in the event, the judgment-debtors succeed in their revisional application challenging the order of dismissal of proceeding as initiated under Section 47 of the C.P.C., they may apply for restitution of possession

under Section 144 C.P.C. before the executing court.

10. In view of such, it appears to this court that, admittedly, a mistake took place on the part of the then conducting advocate of the petitioners in making submission before this court that the said civil revisional application has become infructuous on account of due execution of the decree and satisfaction thereof.

11. As a result, the instant review petition being RVW 56 of 2023 succeeds and is hereby allowed on contest. The order passed by this court on 30th January, 2023 in C.O.1193 of 2022 is hereby recalled, however, subject to payment of costs of Rs.5000/- which is to be paid by the review petitioners to the opposite party within a fortnight from the day of passing of this order.

C.O.1193 of 2022

12. List this matter on April 8, 2024 under the heading **“For Hearing”**.

(Partha Sarathi Sen, J.)