

Court No. 22
20.02.2024
(Item No. 1)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

R.V.W. 176 of 2022

Subrata Ranjan Das
VS
Union of India & Ors.
in
W.P.C.T. 2 of 2021

Union of India & Ors.
VS
Subrata Ranjan Das

Mr. Debasis Sur
Mr. Hare Krishna Halder
Mr. Anshuman Patra
.... For the review applicant
Mr. Atarup Banerjee
Mr. Guddu Singh
.... For Union of India

Mr. Debasis Sur learned counsel appears for the review applicant through virtual mode.

Mr. Atarup Banerjee, learned counsel appears for Union of India through virtual mode.

This is an application for review filed by the review applicant seeking review of an order dated **June 10, 2021** passed in **W.P.C.T. 2 of 2021**.

Pursuant to the direction made by this Court parties have filed and exchanged their affidavits.

The principal plea taken by the review applicant is that, the applicant being the delinquent had submitted his reply to charge sheet dated **September 27, 2011** at **page 65** to the writ petition but while considering the writ petition the Court had

not considered the same and proceeded for the final disposal of the writ petition.

Mr. Debasis Sur, learned counsel appearing for the review applicant referring to ground Nos. **VIII** and **X** from the memorandum of review submits that, the grounds for review are squarely stated therein. Learned counsel for the review applicant submits that, despite due diligence on the part of the petitioner the said reply to the charge sheet submitted by the petitioner could not be drawn attention of the Court by mistake while the writ petition was finally disposed of, though the same was a part of the writ petition. Hence review lies. In support of his contention learned counsel for the petitioner has relied upon the following decisions of the Hon'ble Supreme Court:

- (a) ***In the matter of: Meera Bhanja (Smt) Vs. Nirmala Kumari Choudhury (Smt) reported at (1995) 1 Supreme Court Cases 170;***
- (b) ***In the matter of: State of West Bengal & Ors. Vs. Kamal Sengupta & Anr. reported at (2008) 8 Supreme Court Cases 612*** and
- (c) A decision of the Hon'ble Supreme Court dated ***August 18, 2022 In the matter of: S. Madhusudhan Reddy Vs. V. Narayana***

Reddy & Ors. rendered, inter alia, in **Civil Appeals No. 5503-04 of 2022.**

In the light of the above, learned counsel for the petitioner submits that, had the said document been considered by the writ Court the judgment under review could have been otherwise and as such this review application should be allowed.

Mr. Atarup Banerjee, learned counsel appearing for the respondents opposes the review application principally on the plea of maintainability. Referring to the provisions laid down under **Order XLVII** from the **Civil Procedure Code, 1908 (for short, the Code)**, he submits that, to maintain a review an error must be apparent on the face of record or there has to be discovery of new evidence which after exercise of due diligence was not within the knowledge or could not be produced by the review applicant. Following the said guideline laid down under the said provision of the Code, learned counsel for the respondents submits that, the very document or evidence being the reply submitted by the review applicant against the charge sheet which is available at **page 65** to the writ petition was on record as a part of the writ petition whereupon the Writ Court had passed its order dated **June 10, 2021**. This was not a new evidence or an evidence which could not be

produced or within the knowledge of the petitioner despite exercise of due diligence.

Learned counsel for the respondents further submits that, a Court in exercise its power under review does not sit on appeal over and above the order of which review is sought for. The power and authority of an appellate Court is much wider than the power and authority exercising under review.

In the light of the above submissions he submits that, this review application must fail and should be dismissed as there was no error apparent on the face of record, for which the instant review will lie.

After considering the rival contentions of the parties and on perusal of the materials on records, it appears to this Court that, the document which is claimed to be new evidence discovered by the petitioner, as already narrated above, was made part of the writ petition and was very much before the Writ Court. Therefore, there is no question of accepting the plea of the petitioner that the document was discovered subsequently and was not within the knowledge of the petitioner or the same could not be produced by the petitioner before the Writ Court despite exercise of due diligence.

The guiding principal of review as laid down under **Order XLVII** to the Code states that, there has

to be an error on the face of it for preferring a review. In the instant case the document at **page 65** to the writ petition was very much there on record when the writ petition was finally decided. When a Writ Court has finally decided and the document was on record, it is deemed that the document was considered by the Court and then the final decision was passed in the writ petition. In as much as, the document in the instant case was the reply submitted by the petitioner against the charge sheet. It is the document, therefore, of the petitioner himself which was made part of the writ petition.

In the matter of: Meera Bhanja (Supra) the Hon'ble Supreme Court had observed as under:

“8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

‘It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the

exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

In the matter of: Kamal Sengupta (Supra)

the Hon’ble Supreme Court had observed as under:

“32. In Ajit Kumar Rath v. State of Orissa this Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a civil court and held”: (SCC p. 608, paras 30-31)

‘30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to

say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression 'any other sufficient reason' used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the Rule.

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

In the matter of: S. Madhusudan Reddy
(**Supra**) the Hon'ble Supreme Court had observed as under:

"26. 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 referred to in 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 grounds, at least analogous to those specified in the rule”(Refer: **Chajju Ram v. Neki Ram and Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Poulouse Athanasius and others**).”

In addition to the above, the law on review is also well settled by the Hon’ble Supreme Court **In the matter of: Lily Thomas & Ors. Vs. Union of India & Ors.** reported at **(2000) 6 Supreme Court Cases 224** wherein the Hon’ble Supreme Court had observed as under:

“52. The dictionary meaning of the word “review” is “the act of looking; offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in **Patel Narshi Thakersh and Ors. v. Pradyunman singh ji Arjun singh ji** held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. If cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of Justice. Law has to bend before Justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for

*erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in **S. Nagaraj and Ors v. State of Karnataka and Anr.** held: (SCC pp. 619-20, para 19)*

*‘19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In **Raja Prithwi Chand Law Choudhury v. Sukhraj Rai** the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in **Rajunder Narain Rae v. Bijai Govind Singh** that an order made by the Court was final and could not be altered:*

‘...nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in....The House of Lords exercises a similar power of

rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.'

Basis for exercise of the power was stated in the same decision as under:

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by [Article 137](#) of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by [Article 137](#) of the Constitution. And Clause (c) of [Article 145](#) permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or

order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.'

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

53. This Court in [Northern India Caterers \(India\) Ltd. v. Lt. Governor of Delhi](#) considered the powers of this Court under [Article 137](#) of the Constitution read with [Order 47 Rule 1 CPC](#) and Order XL Rule 1 of the Supreme Court Rules and held: (SCC pp. 171-172, para 8)

"8. It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so: [Sajjan Singh v. State of Rajasthan](#), SCR at p. 948. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: [Giridhari Lal Gupta v. D.N. Mehta](#), SCR at p. 760. The Court may also reopen

its judgment if a manifest wrong, has been done and it is necessary to pass an order to do full and effective justice **O.N. Mohindroo v. Distt. Judge, Delhi, SCR at p. 27.** Power to review its judgments has been conferred on the Supreme Court by [Article 137](#) of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under [Article 145](#). In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47, [Rule 1 of the Code of Civil Procedure](#), and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order XL, R.1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except 'where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility': Sow **Chandra Kanta v. Sheikh Habib .**"

The term **"mistake or error apparent"** by its plain meaning signifies an error which is *ex facie* evident from the record of the case and the same does not require any further examination or scrutiny or explain both on fact and law. If an error is not self-evident and detection thereof requires a detailed enquiry or assigning of reasons, it cannot be construed to be an error apparent on the face of record. An order cannot be corrected merely because

it is erroneous in law or a different view could be arrived at on the same set of facts. In review, reappraisal of evidence is not permitted, as the Court exercising power of review is not an appellate authority.

In view of the foregoing reasons and discussions we are of the considered and firm view that this review application is totally devoid of any merit and not tenable in law.

Accordingly, this review application being **R.V.W. 176 of 2022** stands **dismissed**, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Bivas Pattanayak,J)

(Aniruddha Roy, J.)