



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR**

**MISC.CIVIL APPLICATION (REVIEW) NO.69/2024**

**IN**

**WRIT PETITION NO.2865/2022**

**Smt.Uma wd/o Kuleshawar and anr**

**..VS..**

**The State of Maharashtra, Department of Village  
Development and Water Conservation, thr.its Secretary,  
Mantralaya, Mumbai and ors**

.....  
Office Notes, Office Memoranda of Coram,  
appearances, Court orders or directions  
and Registrar's orders

Court's or Judge's Order

.....  
Shri A.K.Waghmare, Counsel for Applicants.

**CORAM : AVINASH G.GHAROTE & URMILA JOSHI-PHALKE, JJ.**

**CLOSED ON : 23/02/2024**

**PRONOUNCED ON : 01/03/2024**

(Per : Urmila Joshi-Phalke, J.)

1. Heard.

2. By this application, applicants seek review of judgment dated 4.10.2023 passed by this court.

3. The applicants filed a petition bearing Writ Petition No.2865/2022 seeking directions to respondent No.3 Zilla Parishad, Gondia to decide application of petitioner No.1 (applicant No.1 in this application) substituting name of petitioner No.2 (applicant No.2 in this application) in waiting list of compassionate appointment in place of petitioner No.1. The said writ petition was dismissed by observing that delay,

either in making application or appointment on compassionate basis, would defeat very purpose and object of policy which was to grant immediate succour to the family of the bereaved.

4. The review application is filed mainly on the ground that while filing the writ petition, certain documents regarding pension and gratuity, as well as application dated 13.11.2013 which was submitted to respondents, were not part of the petition due to a mistake on the part of applicants as well as their counsel which resulted in dismissal of the petition.

Another ground raised is, that finding recorded by this court regarding non-application of Dnyaneshwar Ramkisan Musane case and policy of 20.5.2015 also appears against facts and law which is a patent mistake committed by the court while passing the judgment.

5. Heard learned counsel for applicants and perused the record.

6. Learned counsel for applicants submitted that while dismissing the petition, this court observed that the case of Dnyaneshwar Ramkisan Musane is not applicable, which is an error apparent on the face of record and, therefore, the judgment passed in the writ petition deserves to be reviewed.

He submitted that at the time of filing of the writ petition, certain documents regarding pension and gratuity were not filed. The amount received by applicants due to death of the deceased is entirely spent for paying bills and, therefore, applicants were in need of immediate succour. However, the observation of this court is erroneous and appears to be patent error which requires to be reviewed.

7. Before entering into controversy, it is necessary to see settled law regarding scope and ambit of Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure.

8. In the case of **Haridas Das vs. Usha Rani Banik (Smt.) and others**, reported at **2006(4) Mh.L.J. (S.C.) 14**, while considering the scope and ambit of Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, it is observed and held in paragraph Nos.14 to 18 as under:

“14. In *Meera Bhanja vs. Nirmala Kumari Choudhury*, (1995)1 SCC 1780 it was held that:

"It is well settled law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, CPC. In connection with the limitation of the powers of the Court under Order XLVII, 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 Tuleswar Sharma vs. Aribam Pishak Sharma speaking through Chinnappa Reddy, J. has made the following pertinent observations:

'It is true 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 be exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of 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 merit. That would be in 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 error committed by the Subordinate Court."

15. A perusal of the Order XLVII, Rule 1 show that review of a judgment or an order could be sought : (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of record or any other sufficient reason.

16. Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma (AIR 1979 SC 1047) this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order XLVII, Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to

this Court it was held as under: (SCC p-390, para 3)

"It is true as observed by this Court in Shivdeo Singh vs. State of Punjab (AIR 1963 SC1908) there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inherent 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 of 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."

17. The judgment in Aribam's case (supra) has been followed in the case of Smt. Meera Bhanja (supra). In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in the case of Satyanarayan Laxminarayan Hegde vs. Mallikarjun Bhavanappa Tirumale[ AIR 1960 SC 137] were also noted:

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error

apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."

18. It is also pertinent to mention the observations of this Court in the case of Parsion Devi vs. Sumiri Devi (1997)(8) SCC 715. Relying upon the judgments in the cases of Aribam's (supra) and Smt. Meera Bhanja (supra) it was observed as under :

"Under Order XLVII, 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 XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, 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."

9. Thus, an application for review would lie *inter alia* (i) when the order suffers from an error apparent on the face of record and permitting the same to continue would lead to failure of justice. The power of review can also be exercised by the Court (ii) on the discovery of new and important material 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. An application for review would also lie (iii) if the order is passed on account of some mistake. It is well settled that reviewing Court is not an appellate court over its own order. Thus, the powers of review can be exercised for correction of mistake and such powers can be exercised within the limits of the statutes. The term 'mistake' or 'error' apparent is discussed by the Honourable Apex Court in the case of **State of West Bengal and others vs. Kamal Sengupta and another**, reported at **(2008) 8 SCC 612** wherein it has been observed that the term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law.

10. The Honourable Apex Court in the case of **Ram Sahu (dead) through LRs vs. Vinod Kumar Rawat and**

**others**, reported at **2021(3) Mh.L.J. 268** by referring catena of decisions of the Honourable Apex Court observed that the principles which can be culled out from the above noted judgments are:

- (i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order XLVII Rule 1 CPC.
- (ii) The Tribunal can review its decision on either of the grounds enumerated in Order XLVII Rule 1 and not otherwise.
- (iii) The expression “any other sufficient reason” appearing in Order XLVII Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) An error which is not self evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).
- (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

It is further held in the case cited *supra* that to appreciate the scope of review, it would be proper for this Court to consider 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 has passed the order or 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 has 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 XLVII Rule 1 CPC.

11. Keeping in mind the aforesaid principles, let us consider the claim of applicants.

12. The first ground raised by applicants is, that some documents are not filed along with application which goes to the root of the matter. The second ground raised is, that finding recorded by this court regarding non-application of Dnyaneshwar Ramkisan Musane's case is patent error committed by the court. While disposing of the writ petition, the court has considered object underlying the provision for grant of compassionate appointment which enables family of the deceased employee to tide over sudden crisis due to the death of bread earner. By referring various decisions of the Honourable Apex Court as well as this court, it is observed that any delay, either in making application or appointment on

compassionate basis, would defeat very purpose and object of policy and immediate succour and an application for appointment on compassionate ground could not be considered after delay of several years. It is further observed, in view of decisions of the Honourable Apex Court, that on account of the reason of prolonged delay either on the part of claimants in approaching or authorities in deciding such claims, sense of immediacy is diluted and lost. During such a long duration, since the family of the deceased was able to sustain it, then granting appointment on compassionate basis after several years would be a back door entry and defeat object of providing public employment on merits. The policy of 2010 does not provide for substitution. This observation itself shows that the writ petition is not dismissed only on the ground of non-application of Dnyaneshwar Ramkisan Musane's case, but it is dismissed considering that factor of immediate succour is now diluted and lost.

13. Insofar as contention of applicants, that documents are not produced on record, cannot be said to be an error apparent on the part of the court. Even, if these documents are considered, they would in fact indicate that on account of the demise of the bread earner, comparatively substantial sums were received by the family of the deceased on account of gratuity and pension which again would indicate

that the need of the family was taken care of. Though a plea has been raised that these amounts were spent on medical bills, that cannot now be gone into, being a question of fact which needed to be established at the outset itself.

14. The principles which can be laid down for applying provision for review, in view of Order XLVII Rule 1 of the Code of Civil Procedure upon which the court can review its decision are enumerated above.

15. The expression “any other sufficient reasons” appearing in Order XLVII Rule 1 of the Code of Civil Procedure has to be interpreted in the light of grounds enumerated in the provision. An error which is not self evident and which can be discovered only by a long process of reasoning, cannot be treated as an error apparent. The term mistake or error apparent, signifies an error which is evident from the record of the case and does not require a detailed examination. If an error is not self evident, it cannot be treated as an error apparent on the face of record for the purpose of Order XLVII Rule 1 of the Code of Civil Procedure.

16. In this view of the matter, grounds raised by applicants, that for some other reasons relevant documents are not filed, are not covered under Order XLVII Rule 1 of the Code of Civil Procedure.

17. As already observed, the writ petition is not dismissed only on the ground of non-application of Dnyaneshwar Ramkisan Musane's case, but it is decided by observing that object of providing compassionate appointment after a long delay is diluted and lost.

18. The expression "any other sufficient reasons" used under Order XLVII Rule 1 of the Code of Civil Procedure means a reason sufficiently analogous to those specified in the Rule. Any other attempts except an attempt to correct an error apparent or an attempt not based on any ground set out in Order XLVII Rule 1 of the Code of Civil Procedure would amount to abuse of process to review its judgment.

19. In this view of the matter, the misc. civil application has no merits and is liable to be rejected and the same is **rejected**.

Misc. Civil Application stands **disposed** of.

**(URMILA JOSHI-PHALKE, J.)**

**(AVINASH G.GHAROTE, J.)**

!! BrWankhede !!