



Rev.Appl.No. 163 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.07.2024

PRONOUNCED ON : 31.07.2024

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

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Rajasthan Patrika Private Limited
Represented by its Authorised Representative
Registered Office at
Kesar Garh, Jawaharlal Nehru Marg
Jaipur – 302 004, Rajasthan ... Petitioner/Respondent

Vs

Phonographic Performance Limited India
Represented by its Director/Authorised Representative
Registered Office at:
Crescent Towers, 7th Floor,
B-68, Veera Estate, off New Link Road, Andheri (West),
Mumbai – 400 053.

... Respondent/Appellant

Prayer: Review Application filed under Order XL VII Rule 1 read with Section 114 of CPC seeking to review and recall the common judgment dated 27.04.2023 passed by this Hon'ble Court in C.M.A.No. 3390 of 2010.



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For Petitioner : Mr. Abishek Malhotra
For RR 1 & 2 : Mr. Srinath Sridevan
Senior Counsel
for M/s. Sri Harini

ORDER

This review application has been filed by the respondent in C.M.A.No.3390 of 2010, seeking review of a common judgment dated 27.04.2023 passed by this Court in a string of Civil Miscellaneous Appeals including C.M.A.No.3390 of 2010.

2. This Court in the Civil Miscellaneous Appeals had examined an order of the Copyright Board by exercising jurisdiction vested under Section 72(2) of the Copyright Act, 1957, to enquire whether the order dated 25.08.2010 made in case No.3-6-2008-CRB (NZ) passed by the learned Copyright Board of New Delhi, should be set aside or not.



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3. The learned Counsel on behalf of the review applicant pointed out that a suit has been instituted by the appellant in the Civil Miscellaneous Appeal, Phonographic Performance Limited (PPL) in Commercial IP Suit No.109 of 2012 against the review applicant. By an order dated 31.03.2021, recording the compromise effected between the parties namely PPL and the present review applicant/ Rajasthan Patrika Private Limited (RPPL), a learned Single Judge of the Bombay High Court, had permitted withdrawal of the said suit and infact also directed refund of Court fees in accordance to the rules. It was also recorded that both the plaintiff and the defendant therein would have no claim against each other. This particular order of the learned Single Judge was passed on the basis of a Settlement Agreement between PPL on the one hand and RPPL on the other hand. That particular suit had been instituted on the ground that the defendant (RPPL) had not kept up with the direction of the Copyright Board which stipulated that 2% of Net Advertising Revenue should be paid from the date of the judgment of the Copyright Board/ 25.08.2010 onwards. It was the complaint that only 1% of NAR was paid from 25.08.2010 till around March 2018 and claiming that 1% difference from 25.08.2010 till March 2018, the suit had been instituted. By the settlement, it had been agreed



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that RPPL would pay the difference of 1% from the date of the judgment of the Copyright Board, till March 2018 and therefore, the parties had entered into an agreement in that regard. This difference amount was also crystallized at Rs.90,00,000/- and it was held in the agreement that it was in full and final settlement of the claims made by each parties against the other.

4. The learned Counsel pointed out that since this agreement had given a quietus to the claim of PPL, had this agreement been brought to the knowledge of this Court, the learned Counsel raised a probability that the nature of the judgment might have changed, so far as RPPL alone is concerned.

5. Taking note of the said compromise effected between the review applicant and the respondent, the Review application was admitted and notice was directed.

6. Learned counsel Ms. Sri Harini entered appearance on behalf of the respondent.



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7. Heard arguments advanced by Mr. Abishek Malhotra, learned counsel for the review applicant and Mr. Srinath Sridevan, learned Senior Counsel for Ms. Sri Harini, learned counsel for the respondent.

8. Mr. Abishek Malhotra, learned counsel for the review applicant pointed out that the respondent Phonographic Performance Limited India (PPL) had instituted commercial IP suit No. 109 of 2012 against the review applicant RajasthanPatrika Private Limited (RPPL). This Suit had been instituted consequent to alleged non performance by RPPL of the Judgment of the Copyright Board dated 25.08.2010 wherein the Copyright Board had directed that RPPL should pay 2% of Net Advertising Revenue (NAR) to PPL from the date of that Judgment. It was the case of PPL in the suit that RPPL had paid only 1% of NAR and therefore, there was a default. The suit had been filed claiming that particular amount from 25.08.2010 till March 2018.

9. In that suit, RPPL and PPL entered into a compromise and RPPL had agreed that they would pay the difference 1% of NAR from



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25.08.2010 till March 2018 and had crystallized that amount which was payable by them in accordance with the Judgment of the Copyright Board at Rs.90,00,000/-. It was contended that this amount would be in full and final settlement of the claim made by PPL against RPPL in that particular suit.

10. There is no quarrel or dispute that the said amount of Rs.90,00,000/- had actually been paid by RPPL to PPL. There is also no quarrel or dispute that on and from March 2018, RPPL is paying 2% of NAR to PPL. Pointing out this particular fact, the learned counsel stated that since the issues had been settled and the payment was in full and final settlement, there cannot be any further burden thrust on RPPL and therefore urged that if this fact had been brought to the notice of this Court while deciding the Civil Miscellaneous Appeal since there was no lis between the parties, the Court might have dismissed the Civil Miscellaneous Appeal in so far as RPPL is concerned.

11. Mr.Srinath Sridevan, learned Senior Counsel for the respondent/PPL/appellant in C.M.A.No. 3393 of 2010 however pointed



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out that the suit before the Bombay High Court had been filed only for the difference in the payment of the Net Advertising Revenue which was lawfully payable by RPPL. He contended that the suit was also with respect to the amounts payable even prior to the Judgment of the Copyright Board dated 25.08.2010 and also from the date of Judgment till March 2018. The learned Senior Counsel pointed out that even when the suit was filed, C.M.A.No. 3390 of 2010 was pending and in the compromise, there was no reference to C.M.A.No. 3390 of 2010. Further, the learned Single Judge of the Bombay High Court, by order dated 31.03.2021 had restricted the settlement only to the issues raised in the commercial IP suit No. 109 of 2012 alone. Both parties were also aware of this particular fact and it is for that reason that in the agreement, the parties had deliberately covenanted in Clause 10 that legal remedies which are otherwise available in pending legal proceedings are specifically kept open. The learned Senior counsel also pointed out Order 23 Rule 3 of the Code of Civil Procedure and stated that the compromise effected was only with respect to the issues raised in the said suit and not with respect to the issues which were pending in the Civil Miscellaneous Appeal. It was therefore urged that the review application should stand dismissed.



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12. I have carefully considered the arguments advanced and perused the materials available on records.

13. The respondent Rajasthan Patrika Private Limited (RPPL) in C.M.A.No. 3390 of 2010 has filed the present Review Application seeking review of the common Judgment dated 27.04.2023 passed by this Court in the said Civil Miscellaneous Appeal along with several other Miscellaneous Appeals filed by the respondent in the review application, Phonographic Performance Limited India (PPL). By the said common Judgment in all the Civil Miscellaneous Appeals, this Court while examining the order of the Copyright Board dated 25.08.2010 had upheld the rate of 2% of Net Advertising Revenue to be paid by the applicant herein and also had introduced the concept of floor price of Rs.660/- per needle hour. This finding of the Court is sought to be reviewed by the petitioner on the ground that the respondent/PPL had earlier filed commercial IP Suit No. 109 of 2012 before the Bombay High Court alleging Copyright infringement and damages against the petitioner.



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14. The contention of PPL was that the petitioner had paid only 1% of NAR when the Copyright Board had directed 2% of NAR to be paid. They claimed this amount from 01.09.2010 till 31.03.2018. In that particular suit, on 21.01.2021, the plaintiff and the defendant entered into an agreement agreeing to settle all claims for the period 01.09.2010 till 31.03.2018 and accordingly, had arrived at a sum of Rs.90,00,000/- to be paid by the applicant herein to PPL, the plaintiff in the suit.

15. On 31.03.2021 since the amount had been paid, the suit was unconditionally withdrawn before the Bombay High Court and in that regard a Judgment was also passed on 31.03.2021.

16. The main ground urged to review the Judgment in C.M.A.No. 3390 of 2010 is that since the parties had entered into an agreement, the appellant / PPL cannot maintain the appeal any further against the applicant herein RPPL. The agreement between RPPL and PPL had been produced before the Court. It is seen that in the agreement, the parties had recorded that there were disputes relating to payment of license fees and that the Copyright Board by order dated 25.08.2010 had held that the tariff



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for exhibition of work recorded in sound recordings should be fixed at 2% of NAR whereas RPPL had paid only 1% till March 2018. It had then been stated that in full and final settlement of all claims made by PPL against RPPL, the amount of Rs.90,00,000/- had been agreed to be paid to PPL by RPPL.

17. However, Clause 10 of the agreement is as follows:-

“x. The present settlement agreement shall dispose off only commercial I.P., suit No. 109 of 2012. All contentions and or legal remedies which are otherwise available to the parties in respect of other pending and/or subsequent legal proceedings are specifically kept open.”

18. It is seen that both parties had kept open issues which were pending in subsequent proceedings. Even in the agreement, there is no mention of C.M.A.No. 3390 of 2010. It is thus clear that the parties had consciously taken a decision not to include the issues in C.M.A.No. 3390 of 2010 as



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part of the settlement reached between them. They had taken a conscious decision to pursue with C.M.A.No. 3390 of 2010 and having taken such decision, they must abide with the directions of the Court in C.M.A.No. 3390 of 2010 and by any appellate authority as against that particular order.

19. It is thus very clear that even if this particular agreement had been brought to the notice of this Court in writing and document also filed, the Court had every right to pursue C.M.A.No. 3390 of 2010. Both the parties had also argued extensively in the said Civil Miscellaneous Appeal.

20. Order 47 Rule 1 CPC is as follows:-

“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,



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(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.”

21. In ***(1997) 8 SCC 715 [Parsion Devi and Others Vs. Sumitri Devi and Others]***, the Hon'ble Supreme Court has held as follows:-



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“9. 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 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 limited purpose and cannot be allowed to be "an appeal in disguise.

10. Considered in the light of this settled position we find that Sharma, J. clearly over-stepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article the scope of



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Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view of



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the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997.”

22. In (2008) 11 SCC 107 [T.Thimmaiah (dead) by Lrs. Vs. Venkatachala Raju (dead) Lrs.], the Hon'ble Supreme Court has held as follows:-

“2. During the course of hearing, the learned counsel for the appellant has pointed out that a bare perusal of the order in review would reveal that it is based on a complete reappreciation of the matter on facts and the provisions of Order 47 Rule 1 of the Code of Civil Procedure which would govern an application for review, have been completely ignored. It has been submitted by the counsel that the Single Judge had, in the first Judgment, examined the facts and dismissed the appeal and on a reconsideration of the same facts, had allowed the same, which was not justified. We find merit in this plea. From a bare perusal of the Judgment in review, it is clear that



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the principles laid down under Order 47 Rule 1 CPC have been completely ignored. We accordingly allow the appeal, set aside the order in review dated 26.2.2001 and dismiss the appeal in the suit. We, however, give liberty to the respondent herein to challenge the Judgment dated 16.2.1999, if so advised.”

23. In (2018) 4 SCC 587 [Sivakami and Others Vs. State of Tamil

Nadu and Others], the Hon'ble Supreme Court has held as follows:-

“18. The scope of the appellate powers and the review powers are well defined. The power of review under Order 47 Rule 1 of the Code of Civil Procedure, 1908 is very limited and it may be exercised only if there is a mistake or an error apparent on the face of the record. The power of review is not to be confused with the appellate power. The review petition/application cannot be decided like a regular intra court appeal. On the other hand, the scope of appeal is much wider wherein all the issues raised by the parties are open for examination by the Appellate Court.



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19. A fortiori, what was not decided in appeal by the Division Bench could not be decided by the Division Bench while deciding the review application. It is for this reason, we are also constrained to set aside the review order.”

24. It is thus seen primarily, that the applicant should be error apparent on the face of the record. Such error had not been pointed out, but rather, it had been pointed out that if the settlement agreement had been brought to the notice of this Court, there could be a possibility of a alternate Judgment being rendered by the Court.

25. I disagree.

26. The agreement is very clear. The language is very straight forward. The intentions of the parties are unambiguous. They had taken a decision to keep pending proceedings open to be decided in those proceedings. The only pending proceeding was C.M.A.No. 3390 of 2010. They had not



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taken any decision to foreclose the same. They had also argued the Civil Miscellaneous Appeal. Naturally, the Judgment which followed should be either abided or taken up in further appeal.

27. The applicant cannot now cry hoarse that the settlement should be considered by the Court. Even if considered, it would not come to the advantage of the applicant.

28. I find no reasons to allow the Review Application. This Review Application stands dismissed.

29. I can only add that since I would consider this as a bona fide attempt, the period from the date of filing the review petition till this date may be set off as provided under Section 14 of the Limitation Act 1963, if the applicant is advised to file an appeal against the order in C.M.A.No. 3390 of 2010.

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Index :Yes/No
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C.V.KARTHIKEYAN, J.

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Pre Delivery Order made in
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