



Rev.Appl(MD) No.121 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

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THE HON'BLE MR.JUSTICE P.VELMURUGAN
and
THE HON'BLE MR.JUSTICE JUSTICE K.K.RAMAKRISHNAN

Review Application (MD) No.121 of 2024
in
Writ Appeal (MD) No.390 of 2024

K.Kanthavel

... Applicant

Vs.

1.The Chairman and Managing Director,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai - 2.

2.The Superintendent Engineer,
TNEB/ TANGEDCO,
Ramanathapuram,
Ramanathapuram District.

3.The Executive Engineer (Distribution),
TNED/TANGEDCO,
Paramakudi,
Ramanathapuram District.

... Respondents



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PRAYER: Review Application is filed under Order 47 Rule 1 and 2 of C.P.C read with Section 114 of C.P.C to review the order dated 02.09.2024 made in W.P(MD)No.390 of 2024 on the file of this Court.

For Appellant : Mr.K.Kandavel
Party in person

ORDER

P.VELMURUGAN, J.

The applicant filed the writ petition before the writ Court to issue a Writ of Certiorari to quash the impugned order in Thalaivar & Melanmai Eyakkunar Nilai EN:120 dated 07.12.2018 on the file of the first respondent as illegal, since the first respondent has not considered the points raised in the mercy petitions dated 29.06.2015 and 05.02.2017. The learned single Judge, after hearing the writ petition, quashed the order of the first respondent dated 07.12.2018 and remitted the matter back with certain directions in para 14 of the order, which reads as follows:-



“14.....

(i) The 1st respondent is directed to elaborate the details on the basis of which the order of punishment as against the petitioner is based to have been established.

(ii) The petitioner should be provided with an opportunity to submit fresh representation with supporting documents to substantiate his defence.

(iii) The question as to whether the facts alleged to have been established by the respondents afford sufficient ground for taking action against the petitioner need to be elaborated.

(iv) The reasons for confirming the punishment as adequate need to be explained.

(v) The petitioner should be furnished with all the documents cited in Annexure III of the charge memo dated 12.04.2010 in compliance to the order passed by this Court in W.P.(MD)No.4425 of 2011 dated 25.04.2012.”

2. Aggrieved over the directions given by the learned single Judge, the applicant filed the writ appeal before this Court. This Court, after hearing the applicant at length, dismissed the appeal and confirmed the



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order of the learned single Judge, by judgment dated 02.09.2024.

Thereafter, the applicant filed the present review application to review the order passed by this Court.

3.The applicant appeared in person. He would submit that the Chairman, Tamil Nadu Electricity Board, who is the first respondent herein, is the top most superior officer in the Tamil Nadu Electricity Board. He had vested with full power in the administration. The applicant submitted a mercy petition to the Chairman, the first respondent on 29.06.2015, to set aside the third respondent's punishment order with anti dated 30.11.2012. Since the first respondent did not pass the order within the reasonable time, the applicant sent several reminder letters on 13 times. After 3-1/2 years, the Chief Engineer (Personnel), sent the order dated 07.12.2018 stating that the mercy petition is rejected. At the distance of time after 15 years directing the applicant again to give a fresh representation to the Chairman, Tamil Nadu Electricity Board, the first respondent, is as against the natural justice. It will not lead any result. It will only waste of time. He would further submit that he did not file a Writ of Mandamus for giving any directions. He filed only the Writ of

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Certiorari to quash the impugned order dated 07.12.2018 and the learned single Judge also quashed the impugned order and not stopped with that, she gave the direction for giving fresh representation, it would be nothing but futile exercise and he filed a writ appeal in W.A(MD)No.390 of 2024 challenging the order of the learned single Judge. This Court also confirmed the order without looking into his grievance. The applicant retired from service on 31.05.2016. Due to the pendency of the case stoppage of next annual increment with cumulative effect perpetually during the rest of his entire service also affected. Terminal benefit like gratuity, pension, etc., are also affect. His family is suffering with poverty day today. Therefore, he filed the present review petition. In order to support his submission, he placed reliance on the following Judgments:-

“(1) **1990 SCR suppl(1) 426** [Kulwant Singh Gill vs. State of Punjab]

(2) **2002(2) BLJR 1094** [Pramod Narayanan Achal vs. Bihar State Electricity Board and others]

(3) **W.A.No.1241 of 2004** [M.Raja Rathinam vs. State Bank of India]”



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4. Heard the applicant and perused the records.

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5. Though the applicant submitted a mercy petition, the same was rejected by the first respondent by the impugned order dated 07.12.2018. Challenging the same, the applicant filed the writ petition before the learned single Judge in W.P(MD)No.14634 of 2014. The applicant in the mercy petitions dated 29.06.2015 and 05.02.2017 raised several valid points. However, the first respondent rejected the mercy petitions in one line order without assigning any reason for the same. Therefore, the learned single Judge considered the same and quashed the impugned order dated 07.12.2018 and gave the direction to the first respondent to give opportunity and consider and pass the speaking order. The appellate Court did not find any reason to interfere with. Therefore, they dismissed the appeal. The grievance of the applicant is that without assigning any reason, simply, the first respondent rejected the mercy petitions. Therefore, the grievance of the applicant is that one is the rejection order passed by the first respondent is not speaking order and the second is the delay. Therefore, considering the earlier history and attitude of the applicant, further direction was given to the first respondent to consider



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and pass the order and in the review application, there is no error apparent on the face of the record. Even if the order is erroneous, that is not the reason for allowing the review application and rehear appeal and pass the order. Even when two views are possible, for that reasons also, the review cannot be entertained. In this regard, it is pertinent to refer the decision of the Hon'ble Apex Court reported in [2024]5 S.C.R 81 (**The State of Telangana & others vs. Mohd. Abdul Oasim (died) Per LRs.**).

The relevant portion of the said Judgment reads as follows:-

24. Now, we shall place on record decisions rendered by this Court on the above principle of law discussed by us,

Power of Review is not to be confused with Powers of Appellate Court in Appeal Jurisdiction.

“Aribam Tuleshwar Sharma v. Aribam Pishak Sharma and others, (1979) 4 SCC 389

“3. The Judicial Commissioner gave two reasons for reviewing his predecessor's order. The first was that his predecessor had overlooked two important documents Exs. A/1 and A/3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true



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as observed by this Court in [Shivdeo Singh v. State of Punjab](#) [AIR 1963 SC 1909] there is nothing in [Article 226](#) of the Constitution to preclude a 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 powers which may enable an appellate Court to correct all manner of errors committed by the subordinate Court.” (emphasis supplied)

Error Apparent on the Face of Record

[Northern India Caterers \(India\) Ltd. v. Lt. Governor of Delhi](#), (1980) 2 SCC 167

“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](#) [AIR 1965 SC 845 : (1965) 1 SCR 933, 948 : (1965) 1 SCJ 377] . 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: [G.L. Gupta v. D.N. Mehta](#) [(1971) 3



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SCC 189 : 1971 SCC (Cri) 279 : (1971) 3 SCR 748, 750]. 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](#) [(1971) 3 SCC 5 : (1971) 2 SCR 11, 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 Rule 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 Kante v. Sheikh Habib](#) [(1975) 1 SCC 674 : 1975 SCC (Tax) 200 : (1975) 3 SCR 933].

9. Now, besides the fact that most of the legal material so assiduously collected and placed before us by the learned Additional Solicitor - General, who has now been entrusted to appear for the respondent, was never brought to our attention when the appeals were heard, we may also examine whether the judgment suffers from an error apparent on the face of the record. Such an error exists if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record.”

(emphasis supplied)



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

“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 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”.

10. Considered in the light of this settled position we find that Sharma, J. clearly overstepped the jurisdiction vested in the Court under [Order 47 Rule 1 CPC](#). The observations of Sharma, J. that “accordingly, the order in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunctions were provided” and as such the case was covered by [Article 182](#) and not [Article 181](#) cannot be said to fall within the scope of [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 latter 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 was 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 Gupta, J. on the grounds detailed in the review petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and we accordingly accept this appeal and set aside the impugned order dated 6-3-1997.” (emphasis supplied)

**Meaning of the Words ‘for any other sufficient reason’
in [Order XLVII Rule 1 of the CPC 1908](#)**

Chhajju Ram v. Neki, 1922 SCC OnLine PC 11

“...It will be observed that the question with which their Lordships have to deal is one concerned not with appeal to a Court of Appeal, but with review by the Court which had already disposed of the case. In England it is only under strictly limited circumstances that an application for such a review can be entertained. In India, however, provision has for long past been made by legislation for review in addition to appeal. But as the right is the creation of Indian statute law, it is necessary to see what such statutory law really allows. The law applicable to the present case is laid down by O. 47, R. 1, [of the Code of Civil Procedure, 1908](#). This Rule is enacted in the following terms:—

“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 hereby 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.”



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If their Lordships felt themselves at liberty to construe the language of O. 47 of the Code of Civil Procedure, 1908 without reference to its history and to the decisions upon it, their task would not appear to be a difficult one. For it is obvious that the Code contemplates procedure by way of review by the Court which has already given judgment as being different from that by way of appeal to a Court of Appeal. The three cases in which alone mere review is permitted are those of new material overlooked by excusable misfortune, mistake or error apparent on the face of the record, or “any other sufficient reason.” The first two alternatives do not apply in the present case, and the expression “sufficient,” if this were all, would naturally be read as meaning sufficiency of a kind analogous to the two already specified, that is to say, to excusable failure to bring to the notice of the Court new and important matters, or error on the face of the record. But before adopting this restricted construction of the expression “sufficient,” it is necessary to have in mind, in the first place, that the provision as to review was not introduced into the Code for the first time in 1908, but appears there as a modification of previous provision made in earlier legislation : and, in the second place, that the extent of the power of a Court in India to review its own decree under successive forms of legislative provision has been the subject of a good deal of judicial interpretation, not, however, in all cases harmonious. That the power given by the Indian Code is different from the very restricted power which exists in England appears plain from the decision in Charles Bright and Co. v. Seller [[1904] 1 K.B. 6.] , where the Court of Appeal discussed the history of the procedure in England and explained its limits.

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Their Lordships have examined numerous authorities, and they have found much conflict of judicial opinion on the point referred to. There is plainly no such preponderance of view in either direction as to render it clear that there is any settled course of decision which they are under obligation to follow. Some of the decisions in the earlier cases may have been influenced by the wider form of expression then in force, and these decisions may have had weight with the learned Judges who, in cases turning on the subsequent Code, had regarded the intention of the legislature as remaining unaltered. But their Lordships are unable to assume that the language used in the Codes of 1877 and 1908 is intended to leave open the questions which were raised on the language used in the earlier legislation. They think that R. 1 of O. 47 must be read as in itself definitive of the limits within which review is to-day permitted, and that reference to practice under former and different statutes is misleading. So construing it they interpret the words “any other sufficient reason” as meaning a reason sufficient on grounds at least analogous to those specified immediately previously. Such an interpretation excludes from the power of review conferred the course taken by the second and third Division Bench, composed of Wilberforce, J., and Scott Smith, J., and by Wilberforce, J., and LeRossignol, J., respectively. The result is that the judgments given by these two Division Benches ought to be set aside, and that of the Bench of the Chief Court composed of Scott Smith, J., and Leslie Jones, J., restored, so that the suit will stand dismissed. The respondent-plaintiffs must pay the costs here and in the Courts below.” (emphasis supplied)

Discovery of New Matter or Evidence

State of W.B. v. Kamal Sengupta, (2008) 8 SCC 612

“21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere



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discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

22. 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. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

An Order can be reviewed only on the prescribed grounds mentioned in [Order XLVII Rule 1 of the CPC 1908](#)

[Shri Ram Sahu v. Vinod Kumar Rawat, \(2021\) 13 SCC 1.](#)

“10. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114CPC 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 114CPC, it appears that the said substantive power of review under Section 114CPC 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 1CPC, 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 1CPC 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.”

(emphasis supplied)

Evidence cannot be Reappreciated in Review

**Kerala SEB v. Hitech Electrothermics & Hydropower Ltd.,
(2005) 6 SCC 651**

“10. This Court has referred to several documents on record and also considered the documentary evidence brought on record. This Court on a consideration of the evidence on record concluded that the respondent had been denied power supply by the Board in appropriate time which prevented the respondent from starting the commercial production by 31-12-1996. This is a finding of fact recorded by this Court on the basis of the appreciation of evidence produced before the Court. In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before



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us that there is any error apparent on the face of the record.
To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise.” (emphasis supplied)

6. Considering facts and circumstances of the case, it is seen that the applicant has not made out any ground to review the judgment and therefore, the review application is dismissed. Therefore, under these circumstances, the first respondent is directed to follow the directions given by the learned single Judge and pass the appropriate order in accordance with law within a period of two months from the date of receipt of a copy of this order. No costs.

[P.V., J.] [K.K.R.K., J.]
24.10.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes
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To:

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2. The Superintendent Engineer,
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3. The Executive Engineer (Distribution),
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4. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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