

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.83 of 2025

In
FIRST APPEAL No.109 of 2023

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Madhumesh Choudhary, aged about 58 years, Male, S/o Sri Tarkeshwar Prasad Choudhary, R/o- Awaran Choudhary Market, Ashok Rajpath, P.S.- Pirbahore, Town and District- Patna.

... .. Petitioner/s

Versus

1. Archana Mukherjee @ Archana Mukherji Daughter of Late Dr. Prasun Kumar Banerji @ Dr. Parshun Kumar Banerjee, At present R/o 27/B, Rollen Road, Kolkata, West Bengal, permanent R/o Mohalla- Bank Road, P.S.- Gandhi Maidan, District- Patna (as per the address given in the Plaint and Decree) whereas the appellant no.- 1 is resident of 160/C, Block- G, New Alipore, P.S.- New Alipore, Kolkata-700053 and appellant no.- 2 is resident of 2/4 Shanti Niketan, P.S. Chanakyapuri, New Delhi-110021
2. Chandana Chatterjee @ Chandana Chatterji, Daughter of Late Dr. Prasun Kumar Banerji @ Dr. Parshun Kumar Banerjee, At present R/o- 27/B, Rollen Road, Kolkata, West Bengal, permanent R/o Mohalla- Bank Road, P.S.- Gandhi Maidan, District- Patna (as per the address given in the Plaint and Decree) whereas the appellant no.- 1 is resident of 160 /C, Block- G, New Alipore, P.S.- New Alipore, Kolkata-700053 and appellant no.- 2 is resident of 2/4 Shanti Niketan, P.S.- Chanakyapuri, New Delhi-110021.
3. Mrs. Soumi Banerji, Wife of Late Dr. Prabir Kumar Banerji, At present resident of 27B, 5th Floor, Roland Road, Kolkata- 700020.
4. Mrs. Preeta Banerji, Daughter of Late Dr. Prabir Kumar Banerji, C/o Mrs. Soumi Banerji, At present resident of 27B, 5th Floor, Roland Road, Kolkata- 700020.
5. Deep Banerji, Son of Late Dr. Prabir Kumar Banerji, C/o Mrs. Soumi Banerji, At present resident of 27B, 5th Floor, Roland Road, Kolkata- 700020.
6. Name not known, Daughter of Late Parshun Kumar Banerjee @ Dr. Prasun Kumar Banerji, At present resident of 27B, Rollen Road, Kolkata, West Bengal, permanent R/o Mohalla- Bank Road, P.S. Gandhi Maidan, District- Patna (as per the address given in the Plaint and Decree).
7. Name not known, Daughter of Late Parshun Kumar Banerjee @ Dr. Prasun Kumar Banerji, At present resident of 27B, Rollen Road, Kolkata, West Bengal, permanent R/o Mohalla- Bank Road, P.S.- Gandhi Maidan, District- Patna (as per the address given in the Plaint and Decree).
8. Name not known, W/o Late Parshun Kumar Banerjee @ Dr. Prasun Kumar Banerji, At present resident of 27B, Rollen Road, Kolkata, West Bengal, permanent R/o Mohalla- Bank Road, P.S.- Gandhi Maidan, District- Patna (as per the address given in the Plaint and Decree).

... .. Opposite Party/s

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Appearance :



For the Petitioner/s : Mr. Ravi Shankar, Adv.
Mr. Ramakant Ram, Adv.
Mr. Nandan Kumar Anurag, Adv.
For the Resp. Nos. 1 & 2 : Mr. Amit Shrivastava, Sr. Adv.
Mr. Sajal Kr. Sinha, Adv.
Mr. Girish Pandey, Adv.
Mr. Ritwik Prasad, Adv.
For the Resp. Nos. 3 & 4 : Mr. Rohitabh Das, Adv.
Mr. Sushil Kumar Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

7 07-11-2025 Heard Mr. Ravi Shankar, learned counsel for the petitioner, Mr. Amit Shrivastava, learned senior counsel for opposite party (O.P.) Nos. 1 and 2, and Mr. Rohitabh Das, learned counsel for O.P. Nos. 3 and 4.

2. The present review application has been filed by the petitioner/respondent in F.A. No. 109 of 2023 under Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure, 1908 (in short, “C.P.C.”), seeking review of the order dated 27.02.2025 passed in I.A. No. 04 of 2025 arising out of F.A. No. 109 of 2023.

3. O.P. Nos. 1 and 2 have preferred F.A. No. 109 of 2023 against the judgment dated 22.06.2023 and decree dated 27.06.2023 passed by the Court of learned Sub-Judge-II, Patna, in Title Suit No. 478 of 2010, which have been challenged by way of the said appeal. In that appeal, an interlocutory application bearing I.A. No. 04 of 2025 was filed by the appellants under Order XLI Rule 5 read with Section 151 of the



Code of Civil Procedure, praying for stay of proceedings in Execution Case No. 767 of 2023, which arose in consequence of the judgment and decree challenged in F.A. No. 109 of 2023. After hearing both sides on I.A. No. 04 of 2025 in F.A. No. 109 of 2023, the prayer of O.P. Nos. 1 and 2 (the appellants in the appeal) was allowed, and the operation of the judgment and decree impugned in the First Appeal, as well as all execution proceedings arising therefrom, were stayed. The said order dated 27.02.2025 is now sought to be reviewed.

4. Learned counsel appearing for the petitioner has submitted that, at the time of staying the execution proceedings, this Court failed to appreciate the substantial amount of money invested by the petitioner, which had been paid to the father of the appellants (O.P. Nos. 1 and 2). To make such payment, the petitioner had taken unsecured loans from his relatives. Before the trial court, a Chartered Accountant (DW-3) admitted that he was a tenant of appellant No. 1 and paid rent to her, this admission itself demolishes the ground taken by appellant No. 1 regarding the nature of the land which forms the subject matter of the alleged agreement. While passing the order dated 27.02.2025, the most material fact as to the execution of the alleged agreement deed by the father of the appellants, which is an admitted position, was not considered. Further, an expert of



the Forensic Science Laboratory compared the alleged signature of the appellants' father with his original signature, and the expert's opinion confirmed the same to be genuine. Order XLI Rule 5 clearly provides that protection must be afforded to both sides, and it would be justified if the plaintiff/petitioner is permitted to stay in the house which is the subject matter of the agreement till disposal of the First Appeal, as the petitioner purchased the house for his and his family's own use and not for commercial purposes.

4.1. It is further submitted that the order dated 27.02.2025 was passed under an erroneous perception that there was a great possibility of transfer of the suit property to others, whereas no such ground was taken by the appellants (O.P.s) in their petition. The nature of the suit property was also wrongly assumed to be commercial, although it is a residential house.

4.2. As to the payment of the alleged amount, it is submitted that the sale agreement itself sufficiently establishes the same. Moreover, the signature of the deponent was accepted by appellant No. 2, daughter of late Dr. Prasun Kumar Banerjee, therefore, the execution of the alleged agreement for sale, as well as the genuineness of its contents, ought to have been treated as accepted.



4.3. It is further stated that earlier an other Bench, by order dated 08.10.2024, refused to grant stay of execution proceedings, and that aspect was not considered by this Bench. It is well settled under Order XLI Rule 5 that no stay shall be granted unless security is furnished by both parties, and said provision was also overlooked.

4.4. Lastly, it is submitted that a sum of ₹2 crores was received by late Dr. Prasun Kumar Banerjee, father of O.P. No. 2, in the year 2008, which was acknowledged in the agreement deed, and interest on the said amount has been regularly paid by the respondent since 2008. As regards the alleged non-filing of ITR or violation of the Income-tax Act, reliance on such grounds by this Court while passing the order dated 27.02.2025 was misplaced, as such issues fall within the jurisdiction of the Income-tax Department under the relevant statute. Hence, the petitioner has made out a case for review of the order dated 27.02.2025 under Order XLVII Rule 1 read with Section 114 of the C.P.C.

5. On the other hand, learned senior counsel appearing for O.P. Nos. 1 and 2 submits that the instant review application is not maintainable. When the order dated 27.02.2025 in F.A. No. 109 of 2023 was passed, a different set



of advocates appeared for the petitioner (who was the plaintiff/respondent in the appeal). The records of F.A. No. 109 of 2023 would reveal that Mr. Azhar Hussain had filed vakalatnama on behalf of the plaintiff/respondent (petitioner herein), and subsequently, Mr. Syed Firoz Raza, Senior Advocate, along with Mr. Azhar Hussain, appeared for the petitioner on 27.02.2025 when the oral order under challenge was dictated. The instant civil review, however, was filed on 24.03.2025 through Advocates Mr. Kamran Fazal and Mr. Md. Shadab Alam Wazdi. Thus, it is an admitted position that a different set of learned advocates had appeared on behalf of the petitioner earlier. It is a settled proposition that review petitions filed by changing counsel are normally deprecated. In this regard, the principles laid down by the Hon'ble Division Bench of this Court in the case of ***Rotary Club, Begusarai & Ors. vs. State of Bihar & Ors.***, reported in AIR 2001 Pat 115, which was followed by this Court in ***M/s Usha International Ltd. vs. The Commissioner of Commercial Taxes & Ors.***, 2019 (1) PLJR 872, are relevant.

5.1. It is further submitted that the present set of advocates appearing for the petitioner have not revealed that they have made any inquiry from the advocates who earlier appeared and drafted the review petition, regarding the relevant



facts as well as grounds of review. On this ground alone, the review petition deserves rejection, as entertaining such practice would set a bad precedent as any litigant could seek review through a new set of lawyers merely by making vague statements like present matter.

5.2. It is further argued that none of the grounds mentioned in the review petition disclose the existence of any of the three circumstances detailed under Order XLVII Rule 1 of the C.P.C. that would justify review of the order dated 27.02.2025.

5.3. Lastly, learned senior counsel has relied upon the judgment of the Hon'ble Supreme Court passed in ***Sanjay Kumar Agarwal vs. State Tax Officer (1) & Anr.***, reported in **2023 SCC OnLine SC 1406**, which lays down eight principles governing review jurisdiction, which has been followed by the Division Bench of this Court in ***Civil Review No. 38 of 2021 in C.W.J.C. No. 23778 of 2019 (Union of India v. Sallauddin)***.

6. Learned counsel appearing for O.P. Nos. 3 to 5 adopts the submissions advanced by learned senior counsel for O.P. Nos. 1 and 2, and also placed reliance on the case of ***Sanjay Kumar Agarwal (supra)***. He submits that a party is not entitled to seek review of a judgment or order merely for the



purpose of rehearing or obtaining a fresh decision. In support of this contention, learned counsel has referred to paragraph No. 10 of the said judgment, which reads as follows:

“10. It is also 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, 1964 SCC OnLine SC 25).”

7. I have heard learned counsels for both sides and perused the order dated 27.02.2025 passed on I.A. No. 04 of 2025 in First Appeal No. 109 of 2023, the review of which has been sought.

7.1. The provisions of Order XLVII Rule 1 and Section 114 of the C.P.C. contemplate three circumstances in which a prayer for review may be entertained. First, as to discovery of a new and important matter: the petitioner has not demonstrated the discovery of any new and important matter that was not within his knowledge when the hearing on I.A. No. 04 of 2025 was made, or which he could not have produced at that time despite exercising due diligence.

7.2. With regard to the grounds of review mentioned



above, the arguments and submissions now advanced were already made at the time of hearing on I.A. No. 04 of 2025. In the light of the pleadings of both sides, the evidences adduced were duly considered by this Court while deciding the said interlocutory application. The petitioner has failed to show that any of the grounds now raised was not considered earlier, and re-appreciation of the same facts under the guise of review is impermissible.

7.3. Second circumstance relates to an error apparent on the face of the record but the petitioner has not demonstrated any mistake or error on the part of this court in the order dated 27.02.2025 that is apparent on the face of the record.

7.4. Third circumstance relates to any other sufficient reason, the petitioner's counsel has not shown the existence of any sufficient reason justifying review of this Court's order dated 27.02.2025.

7.5. It is a settled proposition of law that a Court will not rehear a case or reconsider arguments already presented in the guise of review under Section 114 and Order XLVII Rule 1 of the C.P.C.

8. Accordingly, the petitioner has failed to make out any case for review of the order dated 27.02.2025 passed on I.A.



No. 04 of 2025 in F.A. No. 109 of 2023. The review application has been filed in a casual manner, unnecessarily consuming the valuable time of this Court.

8.1. Hence, the civil review application is **rejected**, with costs of **₹10,000 (Rupees Ten Thousand only)**, to be deposited by the petitioner in the **High Court Legal Services Committee, Patna**, within **one month** from the date of this order. In default, legal steps be taken to recover the amount in accordance with law.

(Shailendra Singh, J)

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