

07.04.2025
Sl. No. 01
Ct No. 3
SG

ASSIGNED MATTER

**RVW 62 of 2025
with
(CAN 1 of 2025)
+
(CAN 2 of 2025)**

**Champak Das
Vs
State of West Bengal & Ors.**

Mr. Prabir Maji.
...for the petitioner

Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata.
...for KMC

Mr. Dyutiman Banerjee.
...for respondent nos. 5-16

Re: CAN 1 of 2025

1. Having considered the averments in the application for condonation of delay and being satisfied with the explanation given, we are inclined to condone the delay in preferring the appeal.
2. The application being CRAN 1 of 2024 is allowed.

Re: RVW 62 of 2025

3. The review petitioner has preferred the present review application seeking review of the order dated 04.10.2024 passed by this Court in MAT 1919 of 2024. This Court vide order dated 04.10.2024 disposed of the writ petition preferred by the original appellant by directing the respondent no. 3, Pradhan,

Radhakantapur Gram Panchayat, Gillarchat, P.S. Raidighi, Dist. – South 24 Parganas to consider the representation of the original appellant after giving an opportunity of hearing to the parties to take the decision whether the construction is an unauthorized one or not within a period of three months. Relevant portions of the order reads, interalia, as follows: -

“8. In such view of the matter, we direct respondent No. 3, Pradhan, Radhakantapur Gram Panchayat, Gillarchat, P.S. Raidighi, Dist. South 24 Parganas to consider the representation of the petitioner at pages 29-30 of the stay application and after giving opportunity of hearing to the parties take a decision whether the construction is an unauthorized one.

9. Needless to mention if respondent no. 3 is of the view that the construction is an unauthorized one, he shall forward its order to the Sub Divisional Officer for necessary steps under sub-section (5) of the said provision of law.

*10. *** *** ****

11. Respondent No. 3 shall complete the enquiry and pass necessary order within three months from the date of communication of this order.”

4. The review petitioner in the present petition states that he is the lawful tenant of deceased Chandratan Halder qua the plot in question and had constructed three shops of pucca structure with tin and tile shed in the year 1980 and has been running his business for the last 44 years. The original appellant being legal heirs of the deceased landlord had already initiated civil proceeding against the review petitioner, being Title Suit No. 194/2023, for his eviction from the premises in question. In the civil suit,

the original appellant, moved an application under Order XXXIX Rule 1 and 2 CPC seeking interim order alleging that the review petitioner herein is making unauthorized construction in the premises in question, however, the said application was rejected by the Civil Court vide order dated 12.06.2023.

5. It is the submission of the learned Counsel for the Review petitioner that the order dated 04.10.2024 passed by this Court directing the Pradhan, Radhakantapur Gram Panchayat to determine whether there is an unauthorized construction in the premises in question or not was the issue before the Civil Court and the same cannot be entertained in the intra court appeal. He further states that since the issue had already been decided by the Civil Court, principle of *res judicata* is attracted and this Court should not have gone into the same issue. It is further submitted by the learned Counsel for the Review petitioner that the omission to note the order dated 12.06.2023 by which the Civil Court had rejected the interim order of the appellant is an error apparent on the face of the record and hence the review petitioner seeks to review the order dated 04.10.2024. The Counsel for the review petitioner has relied on **SDO, Grid Corporation of Orissa Ltd. and Anr. v. Timudu Oram** reported as **(2005) 6 SCC 156** and **Swetambar Sthanakwasi**

Jain Samiti and Anr. v. Alleged Committee of Management Sri R.J.I. College, Agra reported as ***(1996) 3 SCC 11***, to substantiate his contents.

6. This Court has heard the arguments advanced by the learned Counsel for the review petitioner and has examined the documents.

7. The law relating to the scope of review petition is no longer *res integra*. It is well settled principle of law that court's jurisdiction of review is not the same as that of an appeal. A judgment can be open to review only if there is a mistake or error apparent on the face of the record. An error that has to be detected by a process of reasoning cannot be described as an error apparent on the face of record for the court to exercise its power of review. By exercising the power of review, the Court can correct the mistake but not substitute the view it has taken earlier. A judgment may be open to review when any 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 passed 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 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.

8. This Court while passing the order dated 04.10.2024 was conscious of the fact that a civil suit is pending between the parties and vide order dated 12.06.2023 the learned trial Court had refused to grant any interim relief in favour of the appellant. This fact has been mentioned in para 5 of this Court's order dated 04.10.2024.

9. Learned counsel for the review petitioner relied upon the judgment mentioned in paragraph 5 herein above. This court respectfully agrees with the legal proposition laid down therein. However, in the facts of the present case, both judgments are not applicable.

10. As stated hereinabove by exercising the power of review, Court can correct the mistake but cannot substitute the view it has taken earlier. Since the Court has passed the order dated 04.10.2024 with the knowledge and existence of the interim order dated 12.06.2023, there is no mistake or error apparent on the face of the record.

11. In view thereof, no ground has made out to review its order dated 04.10.2024.

12. Accordingly, the review application along with the CAN 2 of 2025 is dismissed.

13. There shall be no order as to costs.

14. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Partha Sarathi Chatterjee, J.) (Gaurang Kanth, J.)