RVW 107 of 2024
In
CO 3067 of 2019

NRSKL Health Care Pvt. Ltd.
Vs.
The Authorized officer, State Bank of India & Anr.

Mr. Chitrak Biswas
... For the petitioner.

Mr. Shiv Mangal Singh ...For the Opposite Parties

Heard on : 31.07.2025

Order on : 05.08.2025

Ajoy Kumar Mukherjee, J.

This Review Application has arisen from the order dated 21st December, 2023 dismissing the Application being CO 3067 of 2019, wherein the petitioner has challenged the said order. The contention that has been raised in the Review Application is that this court while passing the order impugned failed to appreciate that the promise of observing necessary formalities by the Bank/opposite party was false and deceptive and that the equitable mortgage cannot be created on certified copy and has also failed to record that the certified copy can only be used as an original document only after it is endorsed from the office of the Registrar of Assurance. This court did not consider the letter dated 7th October, 2017 by which the deed was questioned and the respondent/opposite party has falsely assured of taking necessary steps of making it a legally valid mortgage. This court while passed the order did not consider that as soon as the petitioner detected that the certified copy is lacking necessary endorsement, he immediately approached the authorised officer and offered to withdraw from the auction but thereafter only on the basis of assurance that the endorsement would be done first, then only the petitioner proceeded further. This court also did not consider that the title with the bank was admittedly a defective title/document and a false declaration was made in the public notice which was also misleading. In fact the court did not consider that it was never the case of the bank that the petitioner had no capacity to pay the balance amount and on the other hand the respondent/bank was in default for not making the necessary endorsement as promised in the meeting, which was admitted in the letter dated 09.10.2017.

The order impugned also suffers from error for the reason that the Court did not consider as to whether the amount paid by the petitioner can be forfeited by the bank for their own fault and/or default. It is erroneous in observing that the principle caveat emptor is applicable, even when the respondent being a public sector bank makes a false, misleading and deceptive public notice. It was not considered that the contents of letter dated 7^{th} October, 2017 was never denied by the bank and that the charge created with the document of title was never in accordance with law. Respondent/bank till date has not denied the contents of letter dated 9th October, 2017 that the petitioner had visited the bank after giving the letter dated 07.10.2017 and it was never denied that the petitioner was falsely assured. In fact petitioner acted immediately when the complete facts came to his knowledge and he at once filed a letter of withdrawal from participation in the auction but the respondent/ opposite party for their own benefit had played a mischief and had made a false assurance knowing that they had no intention to perform and to make the necessary endorsement to make the mortgage valid and therefore the petitioner was never at fault. It has not been considered that it is settled law that only one document can be termed as original and any number of copies can be termed as certified copy. As a general rule any person can obtain any number of certified copy by paying requisite fees and if all these are treated towards valid charge, then that would lead to fraud which resultantly can adversely affect the public exchequer.

Counsel for opposite party submitted that the review Application is barred under order XLVII, Rule 1 of CPC.

I have considered the submissions made by both the parties.

It appears from the impugned order dated 21st December, 2023 that in paragraph 25 the conducting lawyer of the said Application being CO 3067 of 2019, Mr. Radhashyam Tewari, on behalf of the petitioner herein, strenuously argued challenging legality and validity of the said equitable mortgage, contending that equitable mortgage cannot be created on the basis of certified copy of a deed. In the subsequent paragraph this court had dealt with the said issue elaborately and came to its findings. The issue as to whether the earnest money deposited by the petitioner is liable to be forfeited or not has also been raised by learned counsel Mr. Tewari and from paragraph 28 onwards the judgement discussed that since this sum does not relate to pre estimate damages or loss but an amount intended to secure performance of the contract, it may be called as penalty.

Therefore it appears that the grounds as stated by the petitioner in the instant Review Application are in the form of appeal in disguise against the aforesaid judgment and order dated 21st December, 2023 and thereby he proposes for rearguing the case which has already been argued at length by the petitioner's the then counsel Mr. Tewari, during hearing of the said Revisional Application on merit.

In ***Kamlesh Verma Vs Mayawati and others*** reported in **(2013)8 SCC 320**, Supreme Court summarized the principles, where review are maintainable and also where review does not lie. It states in para 20.1 that review will be maintainable.

> ***(i)*** *Discovery of new and important matter of evidence which after exercise of die diligence was not within the knowledge of petitioner of courld not be produced by him*
>
> ***(ii)*** *Mistake or error apparent on the face of record*
>
> ***(iii)****Any other sufficient reason analogous to those specified in the rule.*

The court has also laid down the principles where review is not maintainable at para 20.2 which reads as follows:-

> ***20.2*** *When the review will not be maintainable:*
> ***i.*** *A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
> ***ii.*** *Minor mistakes of inconsequential import.*
> ***iii.*** *Review proceedings cannot be equated with the original hearing of the case.*
> ***iv.*** *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
> ***v.*** *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
> ***vi.*** *The mere possibility of two views on the subject cannot be ground for review.*
> ***vii.*** *The error apparent on the face of the record should not an error which has to be fished out and searched.*
> ***viii.*** *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
> ***ix.*** *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative.*

Under order XLVII rule 1, the power of review can be exercised for correction of a mistake but not to substitute a view and such power can be exercised only within the limits of the statute dealing with the exercise of power and it can never be treated as an appeal in disguise.

In ***Inderchand Jain Vs Motilal,*** reported in **(2009) 14 SCC 663** the Apex Court held that it is beyond any doubt or dispute that the Review Court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law because it constitutes an exception to the general rule that once a judgement is signed or pronounced, it should not be altered.

The most unfortunate part of the present application is that learned Counsel for the petitioner Mr. Radheshyam Tewari has raised all these issues at length during the course of hearing, but the present Review application has been preferred by another counsel, who neither appeared nor was a party while the main Application was heard and disposed of. The Review Petition has been filed by Mr. Chitrak Biswas. Mr. Tewari was the Advocate on record, when the Revisional Application was heard and decided on merit. Mr. Chitrak Biswas was neither an arguing counsel nor was present when the said Application was heard on merit. It has not been disclosed on what basis he has written the grounds in the Review Petition, practically with a prayer for rehearing the Application, without keeping in mind the limited scope of review. This practice of filling review application on self-same issues appointing a new advocate by the self-same petitioner has been seriously deprecated by the Supreme Court in ***Tamil Nadu Electricity Board and Anr***. ***Vs N. Raju Reddiar & Anr***. reported in **(1997) 9 SCC 736** as it is not in the interest of the profession to permit such practice. It held as follow:-

> *"It is a sad spectacle that a new practice unbecoming and not worthy of or conducive to the profession is cropping up. Mr Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on 24-4-1996. Yet another advocate, Mr S.U.K. Sagar, has now been engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor was party in the main case. It is salutary to note that the court spends*

valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on-Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession." (emphasis added)

From the bare reading of sec 114 read with order XLVI rule 1, it is clear that an order can be reviewed by a court only on the prescribed grounds mentioned therein. Therefore the court of review has limited jurisdiction as to the definite limit mentioned in order XLVII rule 1 CPC. Considering in the light of the aforesaid settled proposition of law, I find that no ground as envisaged under order XLVII rule 1 CPC has been made out for the purpose of reviewing the observation made in the judgement. Hence on that ground and also the reasons stated above, I find that the present application for review is absolutely meritless and is liable to be dismissed.

RVW 107 of 2024 arising out of **CO 3067 of 2019** thus stands dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)