

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

RVW 83 of 2022

With

CAN 1 of 2022

Reserved on : 11.02.2025

Pronounced on: 13.02.2025

Smt. Antara Biswas nee Biswas

... Applicant

-Vs-

Sri Debasis Biswas

... Respondent

Present:-

Ms. Arundhati Banerjee

Mr. Kaustav Banerjee

Ms. Ria Kundu

... for the Applicant

Mr. Atis Kumar Biswas

Ms. Jyoti Agarwal

...for the Respondent

Rajarshi Bharadwaj, J:

The petitioner, Sri Debasis Biswas, herein the respondent, filed an application under Section 24 of the Code of Civil Procedure (hereinafter referred to as 'C.P.C') seeking the transfer of Matrimonial Suit No. 174 of 2022 from the Court of the Learned District Judge, Alipore, to the Court of the Learned District Judge, Nadia at Krishnanagar. The respondent, a primary school teacher posted in Tehatta, contends that he suffered grievous injuries in a 2017 accident, leading to multiple surgeries and ongoing physical ailments that make it difficult for him to travel from Nadia to Alipore for court proceedings. He further alleges that the petitioner in the

present case, his wife, is also a resident of Nadia but has falsely shown an Alipore address to harass him. Conversely, the petitioner claims that after an eight-year-long courtship leading to marriage, the respondent's attitude toward her drastically changed, resulting in extreme humiliation, including the challenge of the paternity of their child. She asserts that she was forced to leave her matrimonial home in Nadia due to cruelty and now resides in Survey Park, under the jurisdiction of the Alipore Court.

Both parties have filed separate divorce suits against each other under Section 27 of the Special Marriage Act, 1954—the wife in Alipore (Matrimonial Suit No. 174 of 2022) and the husband in Krishnanagar, Nadia (Matrimonial Suit No. 14 of 2022). Given the respondent's medical condition and employment in Nadia, the Learned Single Judge in C.O 462 of 2022 acknowledged the inconvenience he would face in attending proceedings in Alipore. It also noted that the wife's paternal home is in Krishnanagar and that she had received legal notices at that address. To avoid conflicting judicial decisions, the Learned Single Judge passed an order dated 05.04.2022 deeming it necessary to consolidate both cases in a single jurisdiction and ordered the transfer of the wife's suit from Alipore to Krishnanagar, directing the Alipore Court to transfer all records within 30 days.

The petitioner challenges the order dated 05.04.2022, arguing that it is flawed in both law and fact. She contends that the Hon'ble Judge failed to provide her with a fair opportunity to present her case through an affidavit or submit relevant documents. Additionally, she highlights two criminal proceedings—one under Sections 498A/406/323 of the IPC read with Sections 3/4 of the Dowry Prohibition Act and another for maintenance—are still pending before the Alipore Court. She asserts that these ongoing cases establish the jurisdictional validity of Alipore for the matrimonial dispute.

The petitioner further submits that she was the first to initiate matrimonial proceedings, filing Matrimonial Suit No. 1411 of 2021, which was later withdrawn with liberty to refile, leading to the present suit. She claims that her financial dependency on her retired father, her forced stay in a rented Kolkata accommodation due to domestic abuse, and the failure of the Court to consider police general diaries regarding her suffering were overlooked. Additionally, she argues that the Hon'ble Judge misinterpreted service receipt details, assuming she received documents in Nadia when, in reality, they were received by her father. Lastly, she contends that the respondent, despite claiming inconvenience, frequently travels to Kolkata and is financially stable. She asserts that the impugned order violates the principle of audi alteram partem, is unreasoned, owing to which the present review application has been preferred.

In the matter of **S. Madhusudhan Reddy vs. V Arayana Reddy and Others** reported in **2022 SCC OnLine SC 1034**, Hon'ble Supreme Court has summarized the principles for exercising of review jurisdiction as under:

“24. After discussing a series of decisions on review jurisdiction in Kamlesh Verma v. Mayawati, this Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below:

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words “any other sufficient reason” has been interpreted in Chajju Ram v. Neki, and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

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 re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) *The error apparent on the face of the record should not be 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 negatived.”*

Earlier also the Hon’ble Supreme Court in the matter of ***Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*** reported in **1980 (2) SCC 167** had held as under:

“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. 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. 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. 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 40 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.”

The Supreme Court in **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma** as reported in **(1979) 4 SCC 389** speaking through Chinnappa Reddy, J. has made the following pertinent observations:

"It is true there is nothing in Article 226 of the Constitution to preclude the 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 power which may enable an appellate court to correct 20 all manner of errors committed by the subordinate court."

Having regard to the aforesaid fact, this Court finds that there is no dispute to the said proposition but for seeking review, petitioner is required to show error apparent on the face of record which she has failed in the present case. Therefore, as there is no apparent error on the face of the record, no ground for review is made. Hence, the review petition and connected applications are dismissed.

There shall be no order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

13.02.2025

PA (BS)