

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

R.V.W 161 of 2022

With

CAN 1 of 2023

In

WPA 5193 of 2019

Reserved on : 01.08.2025

Pronounced on: 13.08.2025

The Howrah Municipal Corporation & Ors.

...Applicants

-Vs-

M/s Production Enterprise & Anr.

...Respondents

Present:-

Mr. Sandipan Banerjee

Mr. Ankit Sureka

... ... for the applicants

Mr. Sandip Ghosh

Mr. Subrata Das

Mr. D. Ghosh

... ... for the private respondents

Rajarshi Bharadwaj, J:

1. The present review petition filed by the respondents seeks review of the Judgment and Order dated December 22, 2020, delivered by Hon'ble Justice Arindam Sinha, in W.P. No. 5193(W) of 2019 and related interlocutory applications. The applicants/respondents are constrained to move this review petition, being aggrieved by and dissatisfied with the aforementioned order.

2. The present matter relates to a dispute over payments claimed by the respondents/writ petitioners from the Howrah Municipal Corporation for services purportedly rendered in repairing the Hot Mix Plant and Paver Finisher. The writ petitioners submitted bills amounting to Rs.16,96,706/-.

The Chief Officer of Finance of the Corporation internally approved the bill on July 19, 2018. However, this approval was not from the final competent authority authorized to sanction such payments. The respondents/writ petitioners were engaged through a contract characterized as a work contract, specifically related to repair services of machinery, rather than a supply contract. The tender documents and subsequent work order executed in their favour did not include any clauses incorporating the provisions of the MSME Act. After initial disputes regarding the payment, the Howrah Municipal Corporation disbursed the aforesaid amount pursuant to the judgment and order dated December 22, 2020 passed by the learned Single Judge. However, the Controller of Finance of the Corporation, who is the highest authority in the accounts section, raised serious concerns in an official note-sheet about the quality and satisfactory completion of the repair work claimed by the respondents/writ petitioners. Following the judgment, the Controller of Finance sought to summon the writ petitioners for a hearing on August 31, 2021, seeking relevant documents to verify entitlement to interest under the MSME Act, but the respondents/writ petitioners declined to appear, asserting that the court order did not empower the Controller for such further inquiries. The matter originally arose in 2015 and due to its antiquity, relevant documents and instructions were not available to the Corporation's counsel at earlier stages, resulting in delayed proceedings, including a dismissed appeal filed subsequently before the Division Bench.

3. It is submitted on behalf of the applicants/respondents that the writ petitioners do not fall within the purview of the MSME Act in this case. The learned Single Judge erred in holding that the writ petitioners were entitled to the entire billed amount of Rs.16,96,706 based solely on the internal approval by the Chief Officer of Finance, who is not the competent final authority. Reliance on this internal note is misplaced and does not confer any legal entitlement. The sum claimed pertains to a works contract for repair services

and does not qualify as a supply contract regulated under the MSME Act. Accordingly, the writ petitioners are not entitled to the principal amount.

4. The impugned judgment/order further misapplied Sections 2(b), 15 and 16 of the MSME Act by awarding interest to the writ petitioners on the amount, despite their lack of entitlement to the principal sum. This is contrary to the statutory scheme and relevant legal principles. The learned Single Judge overlooked Government Order No. 4245-S(4), Kolkata, dated May 28, 2013, issued by the Principal Secretary to the Government of West Bengal, Department of Finance, which explicitly excludes work contracts from coverage under the MSME Act. The Government Order distinguishes small-scale industrial units' participation in government tenders by categorizing work contracts differently from supply contracts, only the latter attract the protections of the Act. Since the writ petitioners were awarded a work contract, the Government Order conclusively bars them from claiming benefits under the MSME Act.

5. Furthermore, the contract documents do not contain any provision applying the MSME Act and such terms cannot be unilaterally amended post-contract. The Controller of Finance's note-sheet calls into question the completion and quality of the work, indicating that payment even of the principal amount was premature and unwarranted. Given these circumstances, the respondents/writ petitioners cannot claim interest on a sum they were not entitled to in the first place. Following the judgment, the writ petitioners' refusal to attend the hearing and provide supporting documents demonstrates an unwillingness to substantiate their entitlement further.

6. At the time the judgment/order was pronounced, the Corporation's counsel lacked adequate instructions and documentary evidence to contest the writ petitioners' claims effectively and the Court precluded further argument on these points. Although the matter dates back to 2015 and

delayed document production impeded an earlier presentation of evidence, upon collecting the necessary materials, the Corporation filed an appeal which was dismissed, with liberty granted to seek review before the Single Bench as presently done.

7. Finally, as the funds in question constitute public money, their disbursement must comply with due legal process to ensure transparency and avoid audit difficulties. Payment of interest absent valid entitlement threatens public financial propriety. For these reasons, the applicants/respondent urge that the findings of the learned Single Judge be reconsidered and the present review petition be allowed in the interest of justice.

8. Learned counsel appearing for the respondent/writ petitioners submit that the present review petition is not maintainable in law, as there is no error apparent on the face of the record nor any sufficient cause to warrant review of the consent order dated December 22, 2020 passed by this Hon'ble Court. The Hon'ble Appellate Court has also dismissed the review petitioner's appeal, noting the consented nature of the original order. It is a settled position that a court of review cannot sit as an appellate court, nor can it modify statutory interest rates prescribed under special legislation.

9. In this context, the MSMED Act, 2006 provides a clear and mandatory framework under Sections 15 and 16 regarding payment timelines and interest rates. Section 16 unambiguously requires the buyer to pay compound interest with monthly rests at the prescribed statutory rate from the 'appointed day' for delayed payments, notwithstanding any contrary agreement. Courts are bound to apply these statutory rates as enacted, without modification.

10. In the present facts, the Review Petitioner has failed to comply with the consent order and the statutory mandate under the MSMED Act. It is thus prayed that this Court directs payment of interest strictly in terms of Section 16, as calculated by the Chartered Accountants, maintaining the sanctity of

the statute and the previous orders dated December 22, 2020 and June 26, 2022 of this Hon'ble Court.

11. 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:

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

i. 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.

ii. 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.

iii. 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.

- (ii) Review proceedings cannot be equated with the original hearing of the case.*
- (iii) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (iv) 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.*
- (v) The mere possibility of two views on the subject cannot be a ground for review.*
- (vi) The error apparent on the face of the record should not be an error which has to be fished out and searched.*
- (vii) 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.*
- (viii) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”*

12. 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.”

13. 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."

14. 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 he has failed in the present case. The applicants' review of a consent order dated 22nd December, 2020, cannot be entertained into a limited field of review. 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.

15. There shall be no order as to costs.

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

(RAJARSHI BHARADWAJ, J)

Kolkata

13.08.2025

PA (BS)