

**IN THE HIGH COURT AT CALCUTTA  
CIVIL REVISIONAL JURISDICTION  
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

**RVW 311 of 2024  
with  
CAN 1 of 2024  
In  
C.O. No. 1048 of 2015**

**Samiuzzaman Khan & Ors.**

**-Versus-**

**Baijnath Singh**

For the Petitioners : **Mr. Indrajit Chatterjee.**

For the Opposite Party : **Mr. Debasis Sur,  
Mr. Hare Krishna Halder,  
Mr. Mrinmoy Chatterjee.**

Hearing concluded on : **01.05.2025**

Judgment On : **22.05.2025**

**Prasenjit Biswas, J:-**

1. This is an application seeking for review of an order dated 30.01.2024 passed by this Bench.

2. The Civil Revisional Application being C.O. 1048 of 2015 was disposed of by this Court on 30.01.2024. In that civil revisional application a direction was passed by this Court upon the Special Officer to submit his report. The Special Officer submitted the report stating that the possession of the suit property has been handed over in favour of the opposite party and after receiving the said possession, the opposite party put his own padlock in the entrance gate of the suit property. An application challenging the order dated 24.02.2015 passed by the learned First Appellate Court in connection with Misc. Appeal being No. 6 of 2011 is filed under Article 227 of the Constitution of India wherein a prayer was made for recalling the order dated 11.10.2023 passed by this Court wherein this Special Officer was directed to unlock the padlock so put in the suit property on 29.10.2023. The said revisional application was disposed of by this Court on 30.01.2024 by passing an order which is assailed in this review petition filed on behalf of the petitioner.

3. It is said by the learned Advocate for the petitioner that there is apparent error on the face of the record wherein the order under review was passed ignoring the issue in revisional application. It is said that a revisional application was preferred challenging the order of dismissal of setting aside ex-parte order mainly on this score that no summon was served upon these petitioners/defendants. It is said that the main issue remains unanswered but

the revisional application was dismissed on the facts of delivery of possession of the suit property and as such, this application for review has been filed. So, as per submission of the learned Advocate there is illegality and material irregularity in deciding the case of the petitioner and only on the basis of the report submitted by the learned Special Officer wherein it was reported the possession of the suit property was handed over in favour of the opposite party the revisional application was dismissed. So, it is said by the learned Advocate that the review petition may be allowed on the facts as submitted by him.

**4.** Per contra, learned Advocate for the opposite party submitted that the power of the Civil Court to review the judgment and order is very limited and the review petition cannot be entertained on the ground that the decision was erroneous on merits unless there is error apparent on the face of the record. It is said that a mere error whether factual or legal is not sufficient to invoke review jurisdiction and in order to attract the provisions of Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case.

**5.** I have considered the submissions made by both the parties and have consulted with the materials on record.

**6.** To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 C.P.C. as the same is a substantive provision for review. When a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 C.P.C.,

it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review.

**7.** It is profitable to quote the observation of the Hon'ble Supreme Court in the case of **Sanjay Kumar Agarwal-vs.- State Tax Officer(1) & Anr.**<sup>1</sup> wherein Hon'ble Apex Court discussed the scope of review as made in paragraph 7 and 16. The paragraph nos. 7 and 16 of the said report are reproduced herein below:

*“7. At the outset, it may be stated that the power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution of India. Of course, that power is subject to the provisions of any law made by the Parliament or the Rules made under Article 145. Supreme Court in exercise of the powers conferred under Article 145 of the Constitution of India has framed the Supreme Court Rules, 2013. The Order XLVII of Part IV thereof deals with the provisions of Review. Accordingly, in a Civil Proceeding, an application for review is entertained only on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure and in a Criminal Proceeding on the ground of an error apparent on the face of record. However, it may be noted that neither Order XLVII CPC nor Order*

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<sup>1</sup> **2023 Live Law (SC) 939**

*XLVII of Supreme Court Rules limits the remedy of review only to the parties to the judgment under review. Even a third party to the proceedings, if he considers himself to be an “aggrieved person,” may take recourse to the remedy of review petition. The quintessence is that the person should be aggrieved by the judgment and order passed by this Court in some respect. 1 In view of the said legal position, the Review Petitioners who claimed to be the “aggrieved persons” by the impugned judgment dated 06.09.2022, were permitted to file Review Petitions and were heard by the Court.*

*16. The gist of the afore-stated decisions is that: -*

- (i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.*
- (ii) 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.*
- (iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.*
- (iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected.”*
- (v) A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise.”*
- (vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.*

*(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.*

*(viii) Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.*

**8.** It would appear from the said report that the power of a Civil Court to review its judgment and decision is very much limited and it may be exercised on the discovery of a 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 and it may also be exercised on any analogous ground. But it may not be exercised on the ground the decision was erroneous on merits because it would be the province of a Court of an appeal. So, a mere error whether factual or legal is not sufficient to invoke review jurisdiction. In order to attract the provisions of Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case. An error or mistake to be a ground to seek review must be such, which may strike one on a mere looking at the record and would not require a long drawn process of reasoning to reach the conclusion that there has been a mistake or error.

**9.** It is observed by the Hon'ble Apex Court in the case of **Asharafi Devi (D) Thr. Lrs.-vs- State of U.P.**<sup>2</sup> wherein it is said that it is a settled law that every

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<sup>2</sup> (2019) 5 SCC 86

error whether factual or legal cannot be made subject matter of review under Order 47 Rule 1 of the Code, though it can be made subject matter of appeal arising out of such order. In other words in order to attract provision of Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case. So, a mistake or error which the party pleads for seeking review must be one which is self-evident. If a matter is required to be first reheard and then corrected, it would be an appeal under the guise of review.

**10.** It is further settled that the power of review is to be exercised for correction of mistake and not for substitution of view and a review cannot be claimed for fresh hearing of the matter or for correction of an erroneous view taken on earlier point of time. The error of law or fact of which correction is being sought must "stare in the face" without needing an elaborate argument for establishing same.

**11.** After going through the decision rendered by the Hon'ble Apex Court as stated above it leads no doubt that the Apex Court has repeatedly held that the jurisdiction and scope of review is not as of an appeal. It is a reluctant resort only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. The path on which the review court has to walk upon is indeed very narrow and guarded by the definitive limits. It has to make sure that while deciding review, it shall not transgress the limits and enter province of an appellate court. A petition seeking review cannot be entertained at drop of hat. "Any" or "every" mistake is not sufficient for invoking review jurisdiction. Mistake has to be such which is apparent and manifest on the face of record and if not corrected, would result into miscarriage of justice.

**12.** Review is an exception to the Rule that once the court has pronounced the judgement and signed it, it has no jurisdiction to alter it and it ceases to have control over it. However, an error can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 C.P.C. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction and defined limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power be exercised in the guise of power of review.

**13.** In the case of **State of West Bengal and Ors.-vs. Kamal Sengupta and Ors.**<sup>3</sup> the Hon'ble Court observed at paragraph 22, inter alia that-

*The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.*

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<sup>3</sup> (2008) 8 SCC 612

**14.** Keeping in mind the aforesaid principles of law, I have to hold that the petitioner has been unable to make out any ground in exercise of jurisdiction for review under Order 47 Rule 1 CPC. This petitioner is seeking to reopen the merits of the case by way of the instant application and if one goes through the grounds of review, one will immediately see that the application is an effect and substantive seeking to have the revision reheard on the merit in the review application, which is not permissible under the law.

**15.** Under such circumstances, I find no reason to review the order dated 30.01.2024. There is no error apparent on the face of the record nor have any other grounds been made out by the petitioner which would persuade me to review the order passed in connection with C.O. 1048 of 2015.

**16.** Therefore, the application filed on behalf of the petitioner seeking review of the order dated 30.01.2024 is hereby **dismissed** but without any order as costs.

**17.** Accordingly, the review petition being no. 311/2024 along with other connected applications if any, are hereby dismissed and disposed of.

**18.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

**(Prasenjit Biswas, J.)**