

05.3. 2025
item No.9
n.b.
ct. no. 24

with

RVW 363 of 2024

CAN 1 of 2024

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CAN 2 of 2024

Smriti Paul @ Smritikana Paul.

Vs.

Union of India.

Mr. Achyut Basu,
Mr. Satrajit Sinha,
Mr. Tapan Roy,
Ms. Punam Basu,
Mr. Srikumar Chakraborty,
Ms. Sulagna Sen,
.... For the petitioner.

Mr. Brajesh Jha
.... For the Union of India.

Point of maintainability was raised by the learned
counsel for the respondent/Union of India.

Heard the learned counsel for the petitioner and
the respondent.

It is the submission of the Union of India that this
Court has directed the Railway Authority to comply with
the order passed by this Court positively by handing
over a cheque to the petitioner on the adjourned date.

The review application was preferred by the
petitioner on the ground that the compensatory cost,
which was pleaded by the petitioner before this Court at
the time of disposing of C.O.2874 of 2019 was not
granted. He submits that by virtue of decision of the
Hon'ble Supreme Court in **Salem Advocate Bar**

Association, Tamil Nadu Vs. Union of India reported in **(2005) 6 SCC 344**, the compensatory cost has to be awarded in case of false and vexatious claims. He submits that this Court has not awarded compensatory cost, which is devoid of principle enumerated by the Hon'ble Supreme Court in **Salam Bar Association(Supra)**. Thus, he filed the instant review application, so that the compensatory cost may be awarded.

I have perused the impugned order under review passed by this Court, it appears that this Court has considered the submissions of the parties on claim of compensatory cost and after considering the submissions, this Court came to a definite finding that this Court found no reason or justification to hold that the defence of the Railway Authority is ever vexatious or false. On that observation, this Court has consciously denied any of compensatory cost in favour of the petitioner.

Learned counsel for the petitioner has placed several judgments **1. S. Murali Sundaram Vs. Jothibai Kannan & Ors.** reported in **(2023) 13 SCC 515**, **2. Board of Control for Cricket In India & Anr. Vs. Netaji Cricket Club & Ors.** reported in **(2005) 4 SCC 741**, **3. Moran Mar Baselios Catholicos & Anr. Vs. Most Rev. Mar Poulse Athanasius & Ors.** reported in **AIR 1954 SC 526**. He submits that by virtue of

decision of the Hon'ble Supreme Court, this Court can entertain the review application "In any sufficient reason".

I have perused the observation of Hon'ble Supreme Court in **S. Murali Sundaram(Supra)**, the Hon'ble Supreme Court has specifically observed the scope of the review. It has been observed in paragraph 23 that an erroneous order may be subjected to appeal before higher forum but cannot be subject matter of review under Order 47 Rule 1 of the Code of Civil Procedure.

Since the case of **Kamalesh Verms Vs. Mayawati** reported in (2013) 8 SCC 320, pronounced by the Hon'ble Supreme Court wherein the scope of review has been detailed by the Hon'ble Supreme Court.

"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 fact of the record;*
- (iii) Any other sufficient reason.*

The words "any other sufficient reason" have been interpreted in Chhijju Ram V. Neki and approved by this Court in Moran Mar Basselios Catholicos V. Most Rev. Mar Poulose 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 fact 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 a ground for review.*
- (vii) The error apparent on the fact 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.”

It has been mentioned in **Mayabati(Supra)** in which prospective the review application can be accepted and when the review cannot be allowed. Following the said decision, several authority including Supreme Court has passed the judgments wherein it has been categorically observed that the review application cannot be allowed “as an appeal in disguise”. It appears that the ground of review placed by the petitioner before this Court may be well entertained under appellate jurisdiction but this Court cannot entertain the said ground under review jurisdiction. Moreover, this Court cannot sit in appeal over its own decision.

Under the above observation, it appears that the review application is not maintainable and the same is hereby turned down.

Accordingly, review 363 of 2024 is hereby disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)

