

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR

RVW-IPD/2/2025

M/S AZIONARIA COSTRUZIONI MACCHINE
AUTOMATICHE A.C.M.A S.P.A
VS
THE CONTROLLER OF PATENTS AND DESIGNS AND ANR

For the petitioner	: Mr. Rudraman Bhattacharya, Sr. Adv. Mr. Ritoban Sarkar, Adv. Mr. Rachit Lakhmani, Adv. Mr. Avishek Das, Adv. Ms. Shivangi Verma, Adv. Mr. Piyush Kumar, Adv.
For the Controller	: Mr. Sunit Singhania, Adv. Ms. Priti Jain, Adv.
Heard on	: 25.11.2025
Judgment on	: 25.11.2025

Ravi Krishan Kapur, J.:

1. This is an application seeking review of an order dated 25 November, 2024. Briefly, the petitioner had filed an application for patent in India as a National Phase application before the Kolkata Patent Office being PCT/IB2007/003606 dated 19 November 2007 which was rejected on 14 January 2020. Being aggrieved by the said order, the petitioner had filed a review petition challenging the decision of the Controller on 14 January, 2020. The review application was dismissed on 18 August 2020. Thereafter, the petitioner had filed an appeal, which was dismissed by this Court on 25 November 2024 on the ground of limitation. Being aggrieved by the order dated 25 November

2024, the petitioner had preferred an appeal which was also dismissed on merits on 14 May 2025.

2. Upon the dismissal of the appeal, the applicant has now filed this application seeking review of the order dated 25 November 2024 on the ground that there is an error on the face of the record inasmuch as the delay was not of 597 days but of 404 days in filing of the appeal. It is contended on behalf of the petitioner that the delay was on the ground of COVID-19 and the fact that the petitioner an Italian company and was unable to communicate with their Advocates. In the above background, the petitioner seeks review of the order dated 25 November 2024.
3. On behalf of the respondent, it is contended that there are no grounds whatsoever to seek review of the order dated 25 November 2024. In support of such contention, the respondent relies on *Meera Bhanja(Smt) vs. Nirmala Kumari Choudhury (1995) 1 SCC 170* and *M/s Kshitish Bardhan Chunilal Nath and Ors. Vs. Tata Chemicals and Anr. 2025(1) Indian Civil Cases 438 (Cal)*.
4. Review proceedings are strictly confined to the scope and ambit of Order 47 Rule 1 of the Code of Civil Procedure, 1908 and the grounds enumerated therein. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. In *Kamlesh Verma v. Mayawati, (2013) 8 SCC 320* it has been held as follows:

“14. Review of the earlier order cannot be done unless the court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. This Court in *Col. Avtar Singh Sekhon v. Union of India [1980 Supp SCC 562 : 1981 SCC (L&S) 381]* held as under: (SCC p. 566, para 12)

“12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In *Sow Chandra*

Kante v. Sk. Habib [(1975) 1 SCC 674 : 1975 SCC (Cri) 305 : 1975 SCC (L&S) 184 : 1975 SCC (Tax) 200] this Court observed: (SCC p. 675, para 1)

‘1. ... A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.’”

15. 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 the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. This Court in *Parsion Devi v. Sumitri Devi* [(1997) 8 SCC 715] held as under: (SCC pp. 718-19, paras 7-9)

“7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. v. Govt. of A.P.* [AIR 1964 SC 1372] this Court opined: (AIR p. 1377, para 11)

‘11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an “error apparent on the face of the record”. The fact that on the earlier occasion the court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an “error apparent on the face of the record”, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by “error apparent”. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.’

8. Again, in *Meera Bhanja v. Nirmala Kumari Choudhury* [(1995) 1 SCC 170] while quoting with approval a passage from *Aribam Tuleswar Sharma v. Aribam Pishak Sharma* [(1979) 4 SCC 389] this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. 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 the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be ‘reheard and corrected’. A review petition, it must be remembered has a limited purpose and cannot be allowed to be ‘an appeal in disguise’.”

5. There is nothing in the order which can be described as grossly arbitrary or palpably wrong. Nor is there any error apparent on the face of the record justifying exercise of review of the order dated 25 November 2024. The order has been passed after considering all the facts and is adequately reasoned. In any event, even on merits, there remains a delay of 400 days in the filing of this appeal and there were no grounds which have been made out justifying condonation. A party has to demonstrate the existence of sufficient cause for

such delay to the satisfaction of the Court. Condonation of delay is not a matter of right but a discretion of the Court. *Sheo Raj Singh v. Union of India*, (2023) 10 SCC 531.

6. In *Pathapati Subba Reddy (Died) by L.Rs. v. Special Deputy Collector (LA)*, 2024 SCC OnLine SC 513, the principles governing the exceptions imagined under “sufficient cause” are summarised hereinbelow:

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*
- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*
- (vii) Merits of the case are not required to be considered in condoning the delay; and*
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”*

7. In view of the above, the error which the petitioner alleges is not one which warrants any interference in review jurisdiction. The grounds cited by the applicant do not justify any review. Moreso, the appeal against the order dated 25 November 2024 has been dismissed on merits and there is no scope for re-agitating any of the issues in the garb of a review.

8. In view of the above, the instant application is misconceived and not maintainable. RVW-IPD/2/2025 stands dismissed. However, there shall be no order as to costs.
9. In view of the above, all connected applications also stands dismissed as infructuous.

(RAVI KRISHAN KAPUR, J.)

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