

CM-190-CWP-2025 in/and
RA-CW-11-2025 in
CWP No.30529 of 2024
Date of Decision : 16-01-2025

MUKESH NIGAM AND OTHERS

.....Petitioner(s)

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Bal Krishan Mehta, Advocate
for the petitioners.

Ms. Akshita Chauhan, DAG Punjab.

HARSIMRAN SINGH SETHI, J. (Oral)

CM-190-CWP-2025

1. This is an application for placing on record documents
Annexure P-8 to P-14.

2. Keeping in view the contents mentioned in the application, the
same is allowed. Annexure P-8 to P-14 are taken on record subject to all just
exceptions.

RA-CW-11-2025

1. In the present review petition, the grievance being raised by the
review applicant is that the judgment which has been relied upon by the
Court to decline that claim in the judgment dated 17.07.2024 has wrongly
been relied upon and the same is not applicable.

2. On being asked whether, there is any factual defect in the facts noticed in the said judgment, learned counsel for the applicant has not been able to point out any factual defect in the said judgment.

3. The scope of the review has already been discussed in various judgments of the Hon'ble Supreme Court of India in accordance of which, a review petition cannot be filed to reargue the case and its scope is only be limited to any incorrect fact noticed on the basis of which the judgment has been given. The judgements of the Hon'ble Supreme Court of India as well as this Court illustrating the said position of law ***in Civil Appeal Nos.1167-1170 of 2023 titled as S. Murali Sundaram vs. Jothibai Kannan and others decided on 24.02.2023.*** Relevant paragraph of the said judgment is as under:-

5.1 While considering the aforesaid issue two decisions of this Court on Order 47 Rule 1 read with Section 114 CPC are required to be referred to? In the case of Perry Kansagra (supra) this Court has observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC this Court had summed upon as under: “

- (i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.*
- (ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any longdrawn process of reasoning on the points where there may conceivably be two opinions.*
- (iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.*
- (iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.*
- (v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.”*

4. Further, as per the judgment of Hon'ble Supreme Court of India in ***Aribam Tuleshwar Sharma vs. Aribam Prishak Sharma, (1979) 4 SCC 389***, wherein, it has been held that it is only on the discovery of new and important matter 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 order was made but review petition cannot be filed on the ground that decision was erroneous on merits as the same will be province of a Court of appeal. Relevant paragraph of the judgment is as under:-

3. The Judicial Commissioner gave two reasons for reviewing his predecessor's order. The first was that his predecessor had overlooked two important documents Exs. A-1 and A-3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in

favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909] there is nothing in Article 226 of the Constitution to preclude a 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 powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

5. While deciding the same issue of review, the Hon'ble Supreme Court of India in ***Parison Devi vs. Sumitri Devi (1997) 8 SCC 715*** held that 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 exercise of power of review. Hon'ble Supreme Court of India held that review petition cannot be filed for an erroneous decision to be reheard and corrected and the said review petition cannot be an appeal in disguise. Relevant paragraph of the judgment is as under:-

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 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 O Order rder 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".

6. The said decision has already been followed by this Court in

Paramjit Singh through LRs vs. Gurdial Singh and others, 2022 SCC

Online P&H 1637. Relevant paragraph of the judgment is as under:-

"The counsel has further in his arguments sought to raise the points of self-contradictions self contradictions and self self-defeating stands and which could not be taken into consideration in a review application and and it is well settled law as has sought to be relied upon by counsel for the respondent who has cited the judgments titled as 'Sasi (D) Through Lrs. v. Aravindakshan Nair' (2017) 2 RCR (Civil) 363 and 'Parsion Devi v. Sumitri Devi' (1997) 4 RCR (Civil) 458 458;; where the Apex Court has laid down that a review cannot be allowed to be disguised as an appeal for getting an erroneous decision reheard and corrected and has to be used within the ambit of Order 47 Rule 1 CPC to rectify any error patent on the records instead of assailing the orders on the appeals by this Court before the next Court the instant review has come about for a motivated cause. Since, this Court cannot come across any mistake or an error apparent on the records which could be self evident and any such interpretation that is sought to be put forth by the counsel for the applicant by process of reasoning cannot be considered at this juncture."

7. Recently Hon'ble Supreme Court of India *in Shri Ram Sahu (Dead) through Legal Representatives and others vs. Vinod Kumar Rawat and others (2021) 13 SCC 1*, held as under:-

"6. The limitations on exercise of the power of review are well settled. The first and foremost require requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached attached to the judgment/order cannot be disturbed."

9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient sufficient reason.

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that pronounced, exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In Lily Thomas v. Union of India [Lily Thomas v. Union of India, (2000) 6 SCC 224 :2000 SCC (Cri) 1056] this Court held : (SCC p. 251, para 56) '56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise.' "

8. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is i the creation of a statute. In Patel

Narshi Thakershi v. Pradyumansinghji Arjunsinghji [Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844] , this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

9. *What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by this Court in v. T. Nagappa, AIR 1954 SC 440] . It is held that such an error is an error which is a patent error and not a mere wrong decision. T.C. Basappa v. T. Nagappa [T.C. Basappa on. In Hari Vishnu Kamath v. Syed Ahmad Ishaque [Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1955) 1 SCR 110 11044 : AIR 1955 SC 233] , it is observed as under : (SCC p. 244, para 23). ”.*

8. In the present case, the only argument being raised by the review applicant is that the judgment relied upon is not applicable in the facts and circumstances of the present case, hence the same should be reviewed.

9. The said argument is not within the scope of the review and is only an argument in appeal to be taken up.

10. Learned counsel appearing on behalf of the applicant further submits that option given to the petitioner to avail the remedy before the Educational Tribunal was also wrongly decided. If a judgment is deemed as wrong, the same cannot be made a ground of review as the said argument can only be presented before the appellate Court to substantiate the same. The petitioners without there being any substance to file the review have filed the same.

11. No other argument is raised.

12. Though impermissible under law but there is a tendency to file the review petition after one is not able to secure the prayer raised in the petition so as to re-agitate the said claim before the same Court. Such practice needs to be stopped so that, the precious time of Courts is not wasted considering same claim which has already been decided this review also falls in the said category.

13. The present review petition is accordingly dismissed with a cost of Rs.50,000/- to be deposited by the petitioners equally with the Legal Aid Service, Punjab and Legal Aid Service, Haryana. In case, the cost imposed is not deposited by the review applicant within a period of two weeks, appropriate action be taken by the Registry of this Court to recover the same.

16-01-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO