

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.220 of 2023

In
CIVIL MISCELLANEOUS JURISDICTION No.884 of 2022

Mahendra Kumar Sinha @ Mahendra Kumar Son of Late Babu Kailashpati Sinha, Permanent resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108, presently residing at Kailashpati Bhawan, Mohalla- Kamruddinganj, P.O.- Biharsharif, P.S.- Laheri, District- Nalanda at Biharsharif- 803101.

... .. Petitioner/s

Versus

1. Kameshwar Prasad Singh Son of Late Munshi Mahto, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108.
2. Nagmani Prasad, son of Kameshwar Prasad Singh, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108.
3. Indrajeet Kumar, Son of Kameshwar Prasad Singh, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108.
4. Munna, Son of Kameshwar Prasad Singh, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108.
5. Parmeshwari Devi @ Chandraprabha Devi, wife of Late Sheonandan Prasad Singh, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108. Presently residing at Kailashpati Bhawan, Mohalla- Kamruddinganj, P.O.- Biharsharif, P.S.- Laheri, District- Nalanda at Biharsharif- 803101.
6. Ambuj Kumari, D/o Late Sheonandan Prasad Singh, Wife of Sri Mahesh Prasad, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108. Presently residing at Kailashpati Bhawan, Mohalla- Kamruddinganj, P.O.- Biharsharif, P.S.- Laheri, District- Nalanda at Biharsharif- 803101.
7. Kumari Pushpanjali, wife of Late Ashutosh Kumar, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108. Presently residing at Kailashpati Bhawan, Mohalla- Kamruddinganj, P.O.- Biharsharif, P.S.- Laheri, District- Nalanda at Biharsharif- 803101.
8. Rudranjali Prabha, D/o - Late Ashutosh Kumar, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108. Presently residing at Kailashpati Bhawan, Mohalla- Kamruddinganj, P.O.- Biharsharif, P.S.- Laheri, District- Nalanda at Biharsharif- 803101.
9. Nibha Kumari, Wife of Late Ashok Kumar @ Alok Kumar, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108. Presently residing at Kailashpati Bhawan, Mohalla- Kamruddinganj, P.O.- Biharsharif, P.S.- Laheri, District- Nalanda at Biharsharif- 803101.
10. Lokesh Singh, Son of Late Ashok Kumar @ Alok Kumar, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108. Presently residing at Kailashpati Bhawan, Mohalla- Kamruddinganj, P.O.- Biharsharif, P.S.- Laheri, District- Nalanda at Biharsharif- 803101.



Biharsharif- 803101.

11. Ajit Kumar @ Pappu Kumar, Son of late Sheonandan Prasad Singh, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108. Presently residing at Kailashpati Bhawan, Mohalla- Kamruddinganj, P.O.- Biharsharif, P.S.- Laheri, District- Nalanda at Biharsharif- 803101.
12. Shyam Sundar Prasad Sinha @ Shyam Sundar Prasad, Son of Late Kailashpati Sinha, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108. Presently residing at Kailashpati Bhawan, Mohalla- Kamruddinganj, P.O.- Biharsharif, P.S.- Laheri, District- Nalanda at Biharsharif- 803101.
13. Aashish Ranjan @ Tunni Kumar, son of Shyam Sundar Prasad Sinha, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108. Presently residing at Kailashpati Bhawan, Mohalla- Kamruddinganj, P.O.- Biharsharif, P.S.- Laheri, District- Nalanda at Biharsharif- 803101.
14. Jeetendra Kumar Sinha @ Shibu Kumar, son of Mahendra Kumar Sinha @ Mahendra Kumar, Resident of Village- Bahadurpur, P.O. and P.S.- Chandi, District- Nalanda at Biharsharif- 803108. Presently residing at Kailashpati Bhawan, Mohalla- Kamruddinganj, P.O.- Biharsharif, P.S.- Laheri, District- Nalanda at Biharsharif- 803101.
15. Asha Devi, D/o Late Ram Sharan Mahto, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
16. Sona Devi, D/o Late Ram Sharan Mahto, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
17. Malti Devi, D/o Late Ram Sharan Mahto, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
18. Kiran Devi, D/o Late Ram Sharan Mahto, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
19. Nirmala Kumari, wife of Late Shrawan Kumar, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
20. Guriya, D/o Late Shrawan Kumar, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
21. Ram Kishun Prasad, son of Late Ram Sharan Mahto, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
22. Kaushal Kumar, Son of Late Ram Sharan Mahto, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
23. Guddu, Son of Late Ram Sharwan Kumar, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
24. Munna, Son of Late Ram Sharwan Kumar, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
25. Sumangali Devi, Wife of Late Shyam Narayan Prasad, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
26. Snehlata Devi, Daughter of Late Shyam Narayan Prasad, Wife of Late Satendra Kumar, Resident of Village- Bahadurpur, P.O. Chandi, P.S.-



Chandi, District- Nalanda at Biharsharif.

27. Sukhiya Devi, Wife of Late Parmanand Prasad, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
28. Sushila Devi, Daughter of Late Parmanand Prasad, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
29. Krishna Prasad, Son of Late Chhotu Mahto, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
30. Ram Nandan Prasad, Son of Late Chhotu Mahto, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
31. Chunnu Kumar, Son of Late Parmanand Prasad, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
32. Shambhu Kumar, Son of Late Parmanand Prasad, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
33. Tunnu Kumar, Son of Krishna Prasad, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
34. Ashok Kumar, Son of Krishna Prasad, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
35. Arbind Kumar, Son of Krishna Prasad, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
36. Ajay Kumar, Son of Ram Nandan Prasad, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
37. Vijay Kumar, son of Ram Nandan Prasad, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.
38. Dularchand, son of Late Sadhu Mahto, Resident of Village- Bahadurpur, P.O. Chandi, P.S.- Chandi, District- Nalanda at Biharsharif.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. J.S. Arora, Sr. Advocate
: Mr. Manoj Kumar, Advocate
For the Opposite Party/s : Mr. Sameer Sawarn, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 16-03-2026

1. Heard learned senior counsel for the petitioner as well as the learned counsel for the opposite parties.

2. The present civil review application has been preferred by the petitioner seeking review of the order dated



05.07.2023 passed by this Court in Civil Miscellaneous Case No.884 of 2022 whereby the said miscellaneous case was dismissed and the order dated 15.09.2022 passed by the learned Sub-Judge-I, Nalanda at Biharsharif (hereinafter referred to as 'Trial Court') in Title Suit No. 123 of 1987 whereby the evidence on behalf of the petitioner herein (defendant in Title Suit No.123 of 1987) was closed.

3. It appears from the record that in the aforesaid Title Suit No. 123 of 1987, when the matter was fixed for further cross-examination of the defence witness on 15.09.2022, the said witness did not appear before the learned Trial Court. The learned Trial Court, taking note of the age of the suit and the several opportunities which had already been granted to the defendants for adducing evidence, declined the prayer for adjournment and proceeded to close the evidence of the defendant/petitioner by order dated 15.09.2022. The learned Trial Court was of the view that the defendant/petitioner had been granted sufficient opportunities earlier and further indulgence would unnecessarily delay the disposal of the suit which had been pending for a considerable length of time.

4. The Civil Miscellaneous No.884 of 2022 filed by the petitioner herein has been dismissed by this Court *vide* order



dated 05.07.2023. Upon perusal of impugned order of the learned Trial Court, considering facts and circumstances of the case and materials available on record, this Court upheld the order dated 15.09.2022 passed by the learned Trial Court and observed that the title suit no.123 of 1987 was very old and last opportunity was earlier given to the petitioner herein, but on 15.09.2022, the petitioner herein failed to produce the said witness and accordingly the learned trial court closed the evidence of the witness on behalf of the petitioner herein. This Court further held that there was no valid reason for interference in the impugned order under the supervisory jurisdiction of this Court, and the same is devoid of merit and this Court further dismissed the aforesaid Civil Miscellaneous Petition.

5. Learned senior counsel for the petitioner submitted that the order under review suffers from errors apparent on the face of the record and has been passed under misconception of certain material facts. It is submitted that on the date fixed i.e. 15.09.2022, the matter was posted only for further cross-examination of a defence witness who had already been partly examined on 20.07.2022, and the matter was thereafter adjourned to 04.08.2022 for further cross-examination. On 04.08.2022, the witness was present, but the



cross-examination could not take place and the case was adjourned to 15.09.2022 for cross-examination. It is submitted that on 15.09.2022, the witness could not appear due to sudden illness and a prayer for time was made on behalf of the defendants, however, the learned Trial Court, without considering the earlier presence of the witness and the circumstances of his absence, rejected the prayer and abruptly closed the evidence of the defendant/petitioner without discharging or expunging the testimony of the said witness.

6. Learned senior counsel for the petitioner further submitted that although the suit in question is of the year 1987 yet the delay in the proceeding cannot be attributed solely to the petitioner, as for a considerable period the Court remained vacant and at different stages the proceeding was also affected due to transfer of Presiding Officers and the limited functioning of courts during the COVID-19 pandemic. He submitted that the impugned order dated 15.09.2022 was passed without appreciating that the petitioner cannot be penalized for his previous conduct when sufficient cause was made out for non-appearance of the witness and the other side can be compensated by adequate costs. He relied upon the observation made in the judgment of the Hon'ble Supreme Court in *A.*



Murugesan v. Jamuna Rani, reported in **(2019) 20 SCC 803** that it is fairly well-settled that when an application is filed for setting aside *ex-parte* decree under Order IX Rule 13 of the C.P.C., the only aspect which is required to be considered is whether any sufficient cause is shown for the absence in the matter when the matter was called. He next submitted that at best, the partly examined witness could have been discharged or his testimony expunged, but the entire evidence of the defendant could not have been closed. It is therefore submitted that this Court, while dismissing the earlier Civil Miscellaneous Case, could not fully appreciate these aspects of the matter, and as such the order dated 05.07.2023 deserves to be reviewed in the interest of justice.

7. Per contra, learned counsel for the Opposite Party No. 1 opposed the present review application and submitted that the same is wholly misconceived and not maintainable in law. It is submitted that the scope of review under Section 114 of the C.P.C. is extremely limited and a review cannot be treated as an appeal in disguise for re-hearing the matter on merits. Learned counsel further submitted that, this Court, while passing the order dated 05.07.2023 in Civil Miscellaneous Case No. 884 of 2022, had duly considered the



entire factual background and found no infirmity in the order of the learned Trial Court, and therefore the petitioner cannot be permitted to re-agitate the very same issues in the guise of a review petition.

8. Learned counsel for the Opposite Party No. 1 further submitted that the suit in question is pending since the year 1987 and the learned Trial Court had granted several opportunities to the defendant/petitioner to adduce evidence, but the petitioner repeatedly failed to produce witnesses and sought adjournments, thereby causing inordinate delay in the proceeding. Learned counsel submitted that even on 15.09.2022, when the petitioner alleged illness of the witness, no medical certificate or supporting material was produced before the learned Trial Court and therefore the the learned Trial Court was justified in declining further adjournment and closing the defence evidence. It is thus submitted that the order under review does not suffer from any error apparent on the face of the record, nor does it disclose any ground warranting exercise of review jurisdiction, and as such the present review application is liable to be dismissed.

9. I have considered the submissions advanced on behalf of the parties and have perused the materials available on



record. Before adverting to the rival contentions, it would be apposite to reiterate the settled legal position that the scope of review under Order XLVII Rule 1 of the C.P.C. read with Section 114 of the C.P.C. is extremely limited, and that a review court does not sit in appeal over its own judgment, nor can it re-appreciate evidence or correct an alleged erroneous decision on merits, unless the error complained of is manifest, patent, and apparent on the face of the record. A judgment may be reviewed only on discovery of new and important matter or evidence, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason analogous thereto.

10. The Hon'ble Supreme Court in ***Malleeswari v. K. Suguna & Anr.*** reported in **2025 SCC OnLine SC 1927** has vividly enumerated the scope of civil review under Order XLVII Rule 1 read with Section 114 of the C.P.C. as herein under:

“15. It is axiomatic that the right of appeal cannot be assumed unless expressly conferred by the statute or the rules having the force of a statute. The review jurisdiction cannot be assumed unless it is conferred by law on the authority or the Court. Section 114 and Order 47, Rule 1 of CPC deal with the power of review of the courts. The power of review is different from appellate power and is subject to the following limitations to maintain the finality of judicial decisions:

15.1 The 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 of CPC.



15.2 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.

15.3 In exercise of the jurisdiction under Order 47 Rule 1 of 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.

15.4 The power of review can be exercised for the correction of a mistake, but not to substitute a view. Such powers can be exercised within the limits specified in the statute governing the exercise of power.

15.5 The review court does not sit in appeal over its own order. A rehearing of the matter is impermissible. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. Hence, it is invoked only to prevent a miscarriage of justice or to correct grave and palpable errors.

16. To wit, through a review application, an apparent error of fact or law is intimated to the court, but no extra reasoning is undertaken to explain the said error. The intimation of error at the first blush enables the court to correct apparent errors instead of the higher court correcting such errors. At both the above stages, detailed reasoning is not warranted.

17. Having noticed the distinction between the power of review and appellate power, we restate the power and scope of review jurisdiction. Review grounds are summed up as follows:

17.1 The ground of discovery of new and important matter or evidence is a ground available if it is demonstrated that, despite the exercise of due diligence, this evidence was not within their knowledge or could not be produced by the party at the time, the original decree or order was passed.

17.2 Mistake or error apparent on the face of the record may be invoked if there is something more than a mere error, and it must be the one which is manifest on the face of the record. Such



an error is a patent error and not a mere wrong decision. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.

17.3 Lastly, the phrase 'for any other sufficient reason' means a reason that is sufficient on grounds at least analogous to those specified in the other two categories."

11. This Court has given anxious consideration to the submissions advanced on behalf of the parties and has carefully examined the supplementary affidavit, perused the materials on record and considered the settled principles governing the scope of review jurisdiction. Upon such consideration, this Court finds that the petitioner has not been able to point out any error apparent on the face of the record in the order dated 05.07.2023 passed in Civil Miscellaneous Case No. 884 of 2022. The grounds urged in the review petition substantially reiterate the very same submissions which had already been advanced and considered while deciding the said Civil Miscellaneous Case. The review petitioner is essentially seeking a re-appreciation of the factual aspects relating to the opportunities granted for leading defence evidence and the circumstances surrounding the order dated 15.09.2022 passed by the learned Trial Court. Such an exercise would amount to rehearing the matter on merits, which is clearly impermissible



within the limited scope of review jurisdiction.

12. It further appears from the record that the learned Trial Court had taken note of the long pendency of the suit of the year 1987 and the repeated opportunities granted to the defendant/petitioner for adducing evidence before passing the order closing the defence evidence. This Court, while dismissing the earlier Civil Miscellaneous Case by order dated 05.07.2023, had also considered these aspects and found no infirmity in the order passed by the learned Trial Court. The submissions now sought to be advanced by the petitioner do not disclose discovery of any new and important matter nor do they demonstrate any manifest error apparent on the face of the record so as to justify exercise of the review jurisdiction of this Court.

13. In view of the discussions made hereinabove and considering the limited scope of review jurisdiction, this Court is of the considered opinion that the petitioner has failed to establish any ground as contemplated under Section 114 of the C.P.C. for review of the order dated 05.07.2023 passed in Civil Miscellaneous Case No. 884 of 2022. The grounds urged in the present application do not disclose any error apparent on the face of the record nor do they bring on record any new or



important matter which could not be produced earlier despite due diligence. What the petitioner essentially seeks is a reconsideration of the matter on merits, which is beyond the scope of review jurisdiction.

14. Accordingly, this Court finds no merit in the present Civil Review Application, and the same is hereby dismissed.

15. There shall be no order as to costs.

16. Pending Interlocutory Application(s), if any, stand disposed of.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	11.03.2026
Uploading Date	17.03.2026
Transmission Date	NA

