

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.369 of 2024

In
CIVIL MISCELLANEOUS JURISDICTION No.953 of 2023

Hemati Kumari @ Hemanti Kumari @ Aarti Devi W/o- Taniklal Vishwakarma and D/o- Ghanshyam Vishwakarma, R/o At- Khalasi Mohalla- Jhajha, P.S.- Jhajha, District- Jamui, Present Address- Village- Rampur, P.O.- Manghgain, P.S.- Sangrampur, District- Munger.

... .. Petitioner/s

Versus

1. Hemlata Devi W/o- Late Radheshyam Prasad Vishwakarma, R/o At- Khalasi Mohalla, P.O.- Jhajha, P.S.- Jhajha, Dist.- Jamui.
2. Mohan Vishwakarma S/o- Late Radheshyam Prasad Vishwakarma, R/o At- Khalasi Mohalla, P.O.- Jhajha, P.S.- Jhajha, Dist.- Jamui.
3. Ravi Vishwakarma S/o- Late Radheshyam Prasad Vishwakarma, R/o At- Khalasi Mohalla, P.O.- Jhajha, P.S.- Jhajha, Dist.- Jamui.
4. Santosh Vishwakarma S/o- Late Radheshyam Prasad Vishwakarma, R/o At- Khalasi Mohalla, P.O.- Jhajha, P.S.- Jhajha, Dist.- Jamui.
5. Shankar Vishwakarma S/o- Late Radheshyam Prasad Vishwakarma, R/o At- Khalasi Mohalla, P.O.- Jhajha, P.S.- Jhajha, Dist.- Jamui.
6. Sulekha Kumari D/o- Late Radheshyam Vishwakarma, W/o- Shri Kishor Vishwakarma, R/o Village- Jinhara, P.O.- Laxmipur, P.S.- Laxmipur, Dist.- Jamui.
7. Rekha Kumari D/o- Late Radheshyam Vishwakarma, W/o- Ishwar Vishwakarma, R/o Village- Dalhatta Munger, P.O. and P.S.- Munger, Dist.- Munger.
8. Chandrama Kumari D/o- Late Radheshyam Vishwakarma, W/o- Sushil Vishwakarma, R/o At- Maksuspur Munger, P.S.- Munger, Dist.- Munger.
9. Manorma Kumari D/o- Late Radheshyam Vishwakarma, W/o- Shri Tuntun Vishwakarma, R/o Mohalla- Dhobi Tola, Maksuspur, Munger, P.S.- Munger, Dist.- Munger.
10. Kokila Devi W/o- Late Ghanshyam Prasad Vishwakarma, present W/o- Dhaneshwar Mistry, Village- Haria, P.O.- Laxmipur, P.S.- Laxmipur, Dist.- Jamui.
11. Banshidhar Vishwakarma S/o Late Vishwanath Vishwakarma, R/o At- Bari Kali Ashtan Tiptop Road, Jamalpur, P.S.- Jamalpur, Dist.- Munger.
12. Giridhar Vishwakarma S/o- Late Vishwanath Vishwakarma, R/o At- Bari Kali Ashtan Tiptop Road, Jamalpur, P.S.- Jamalpur, Dist.- Munger.
13. Dwarika Vishwakarma S/o- Late Vishwanath Vishwakarma, R/o At- Bari Kali Ashtan Tiptop Road, Jamalpur, P.S.- Jamalpur, Dist.- Munger.
14. Raghubir Vishwakarma S/o- Purnamasi Vishwakarma, R/o At- Bari Kali Ashtan Tiptop Road, Jamalpur, P.S.- Jamalpur, Dist.- Munger.
15. Dinesh Vishwakarma S/o- Raghubir Vishwakarma, R/o At- Bari Kali Ashtan



Tiptop Road, Jamalpur, P.S.- Jamalpur, Dist.- Munger.

16. Munna Vishwakarma S/o- Raghubir Vishwakarma, R/o At- Bari Kali Ashtan Tiptop Road, Jamalpur, P.S.- Jamalpur, Dist.- Munger.
17. Hari Om Vishwakarma S/o- Raghubir Vishwakarma, R/o At- Bari Kali Ashtan Tiptop Road, Jamalpur, P.S.- Jamalpur, Dist.- Munger.
18. Chhotu Vishwakarma S/o- Raghubir Vishwakarma, R/o At- Bari Kali Ashtan Tiptop Road, Jamalpur, P.S.- Jamalpur, Dist.- Munger.
19. Janak Nandini Devi W/o- Kailash Vishwakarma, R/o At- Damodar Colony, Near Balu Lori Andal, P.S.- Andal, District- Bardman.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Brajesh Sahay, Advocate
Mrs. Rupa Sinha, Advocate
Ms. Harshita, Advocate
For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 17-04-2026

I.A.No.01 of 2025

Heard learned counsel for the petitioner.

2. This interlocutory application has been filed for condoning the delay of 84 days in preferring this review application.

3. For the reasons mentioned in this interlocutory application, I am satisfied that the petitioner was prevented from sufficient cause in preferring this application within time.

4. Accordingly, this interlocutory application is allowed and the delay in filing this application is hereby condoned.

Civil Review No. 369 of 2024



5. The present civil review petition has been filed for recalling/reviewing the order/judgment dated 28.08.2024 passed in Civil Misc.No. 953 of 2023 by this Court whereby and whereunder the petition filed by the review petitioner has been dismissed as withdrawn.

6. The learned counsel for the petitioner submits that when the said civil miscellaneous petition was taken up for hearing, some other counsel had been appearing in the matter and he failed to place the facts before the Court in proper manner and withdrew the petition. For this reason, the order/judgment dated 28.08.2024 needs to be reviewed and the matter may be heard on merits.

7. Perused the records.

8. It appears that the sole ground for reviewing the order dated 28.08.2024, which has been taken by the learned counsel for the review petitioner, is that when the said civil miscellaneous petition was taken up for hearing, some other counsel was appearing in the matter and he failed to place the facts before the Court in proper manner and withdrew the petition.

9. Now the question arises for consideration before this Court as to whether the review application should be



entertained in the present circumstance when previous counsel himself had sought permission to withdraw and the permission was accorded to him and now the subsequent counsel taking a ground in the present review petition that the previous counsel failed to place the facts before the Court in proper manner and withdrew the petition.

10. The Hon'ble Division bench of this Court in the case of *Usha International Ltd. v. The Commissioner of Commercial Taxes, Bihar* reported in *2019 (1) PLJR 872* has occasion to consider this aspect. The Hon'ble Division Bench, in the case of *Usha International Ltd. (supra)*, while relying upon the earlier judgment of the Hon'ble Division Bench of this Court in the case of *Rotary Club, Begusarai v. State of Bihar*, reported in *AIR 2001 Patna 115*, reiterated its views expressed in *Rotary Club, Begusarai (supra)* as under:

“.....Recourse to review by change of lawyers is normally deprecated by Courts. The practice becomes all the more reprehensible when review is sought on grounds pertaining to the previous conduct of the case or other grounds of fact normally within the knowledge of the previous lawyer(s). To my mind a lawyer must be very reluctant to take up a brief of review unless he had appeared in the case, the order passed in which is the subject of review. In case for some reasons a



change of lawyer is unavoidable, the newly engaged lawyer would owe it to himself and to the profession to have the statement of facts duly verified by the lawyer earlier conducting the case. In case a review is filed by a new lawyer a certificate ought to be appended to the review petition, preferably by the previous counsel, stating that the facts stated in the petition were correct or alternatively by the newly engaged lawyer testifying that he had got the facts stated in the review petition verified by the previous lawyer.....”

Clearly, the condition precedent for seeking review with change of lawyer is absent. Moreover, review is sought on the ground that the previous counsel did not place the facts properly before the Court. In other words, he did not follow the instruction. It is a serious allegation and the learned new counsel was required to trend cautiously in the matter to satisfy the required condition. Nonetheless, no such steps have been taken and considering the fact that the matter was dismissed as withdrawn at the instance of the then counsel, scope of review is severely circumscribed.

11. Further, it is also well settled that a review proceeding cannot be equated with the original hearing of the case. A party is not entitled to seek review of a judgment/order merely for the purpose of re-hearing and fresh decision of the case. Review of an earlier order cannot be done unless the Court



is satisfied that some material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

12. In the case of ***Col. Avtar Singh Sekhon v. Union of India***, reported in ***1980 Supp SCC 562***, the Hon'ble Supreme Court in paragraph 12 held as under :-

“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. Sheikh Habib [(1975) 1 SCC 674, 675 : 1975 SCC (Tax) 200 : 1975 SCC (L&S) 184 : (1975) 3 SCR 933, 934] this Court observed : (SCC p. 675, para 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.”

13. The scope of Order XLVII Rule 1 CPC, dealing with review of a judgment, has been succinctly stated by the Hon'ble Supreme Court in the case of ***Parsion Devi v. Sumitri***



Devi reported in ***(1997) 8 SCC 715*** as under:-

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 : (1964) 5 SCR 174] (SCR at p. 186) this Court opined:

“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.”

14. To the same effect is the decision of the Hon’ble Supreme Court in the case of ***Arun Dev Upadhyaya v. Integrated Sales Service Ltd.*** reported in ***(2023) 8 SCC 11***, wherein in paragraph 35 it has been held as under :

“35. From the above, it is evident that a power to



review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order 47 Rule 1CPC. 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".

(emphasis is mine)

15. In the case of ***Lily Thomas v. Union of India*** reported in ***(2000) 6 SCC 224***, the principle was reiterated by the Hon'ble Supreme Court with a caution that in exercise of power of review, the Court may correct the mistake but not to substitute the view. Relevant portion of paragraph 56 of the said judgment is reproduced below :

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..."*

16. Further, scope of review is limited in the light of Order 47 Rule 1 of CPC. Hon'ble Apex Court in the case of ***S.Murali Sundaram vs. Jothibai Kannan & Ors.*** reported in ***2023 SCC OnLine SC 185*** elaborately considered under what circumstances courts can review its own order. Recently in yet



another decision in the case of ***Sanjay Kumar Agarwal v. State Tax Officer (1) & Anr.*** reported in ***2023 SCC OnLine SC 1406*** Supreme Court has laid down eight principles in Para 16 which reads as under:

16. The gist of the aforestated decisions is that:

16.1. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2. 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.

16.3. 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.

16.4. In exercise of the jurisdiction under Order 47 Rule 1CPC, it is not permissible for an erroneous decision to be “reheard and corrected”.

16.5. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.

16.6. Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.



16.7. 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.

16.8. Even the change in law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review”.

17. Having regard to the facts before me, the grounds taken for recalling/reviewing the order/judgment dated 28.08.2024 passed in Civil Misc. No.953 of 2023 are misconceived. Further, I am also of the considered opinion that this review application on the ground that previous counsel has not placed the facts before this Court in a proper manner and withdrew the petition is liable to be rejected in view of the Hon’ble Division Bench judgment of this Court in the case of ***Usha International*** (Supra).

18. In the light of aforesaid discussion as well as principles laid down by the Hon'ble Apex Court in a catena of decisions including the decision rendered in the case of ***Sanjay Kumar Agarwal*** (supra) as well as decision of the Hon’ble Division Bench of this Court in the case of ***Usha International*** (Supra), I am of the considered opinion that the petitioner has not been able to even remotely show this Court any material



error manifest in the order/judgment and, therefore, the order/judgment under review does not fall within the scope and ambit of Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure so as to recall/review the judgment/order dated 28.08.2024 passed in Civil Misc. No.953 of 2023. Therefore, the civil review petition stands dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2026
Transmission Date	NA

