GAHC010203962026

2026:GAU-AS:16674

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./171/2026

UNION OF INDIA AND ANR
REPRESENTED BY THE SECRETARY, MINISTRY OF RAILWAYS, RAILWAY BOARD, RAIL BHAWAN, NEW DELHI- 110001

2: THE GENERAL MANAGER
N.F. RAILWAY
MALIGAON
GUWAHATI
ASSAM- 78101

VERSUS

M/S MAHESH ENTERPRISE PVT. LTD.
REPRESENTED BY SHRI DAU DAYAL SHARMA, SHANTI SADAN, ROOM NO. 404, 4TH FLOOR, A.T. ROAD, GUWAHATI- 781001, ASSAM

Advocate for the Petitioner : MR G GOSWAMI (C.G.C.),

Advocate for the Respondent : MR. K P MAHESWARI, MR. ARGHA DEB,MR. DIVYAM RATHI,MR. DIVYANSH RATHI

In
MFA Case No. 44/2024(D/O)

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

11.11.2026

[1] Heard Mr. G.Goswami, the learned counsel

for the review petitioners. Also heard Mr. D. Rathi, the learned counsel for the respondent.

[2] This review application under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 has been filed by the petitioners seeking review of the judgment and order dated 17.08.2026 passed by this Court in MFA No. 44/2024, whereby the appeal preferred by the present respondent was allowed.

[3] The facts relevant for consideration of the instant review petition, in brief, are that the present respondent, namely, M/s Mahesh Enterprise Pvt.Ltd., had filed an appeal under Section 23 of the Railway Claims Tribunal Act, 1987, impugning the judgment and order dated 17.04.2024 passed by the Railway Claims Tribunal, Guwahati Bench, in Original Application No. OA III-268/2012 (Old). By the said judgment, the prayer of the present respondent for refund of terminal charges of Rs. 9,56,258/- was rejected. However, the prayer for refund of Rs. 65,785/- on account of illegal penal charges imposed by railways was allowed.

[4] By the judgment of which review is sought for in this review application, the appeal preferred by the present respondent was allowed and the present review petitioners was directed to refund the terminal charges paid by the present respondent, i.e., Rs. 9,56,248/- along with the interest @ 9% per annum to it.

[5] Mr. D. Goswami, learned Standing Counsel, Railways, appearing for the review petitioners, submitted that in the judgment under review, this Court relied on the decisions passed by coordinate benches of this Court in MFA No. 42/2017 and MFA No. 105/2017. However, it did not take into consideration the judgment of a coordinate bench of this Court, passed in MFA No. 27/2016 (***Union of India Vs.M/s Manas Salt Iodisation Industries Ltd***., decided on 10.02.2025).

[6] The learned counsel for the review petitioners, however, fairly submits that the engaged counsel for the railway did not refer the judgment passed by the co-ordinate bench of this court in MFA No. 27/2016 before this court while arguing the MFA No. 44/2024, due to oversight. He submits that since a co-ordinate bench of this court in MFA No. 27/2016, which was decided prior to the judgment of which review is sought for in this review application, had upheld the collection of terminal charges, as completely lawful under Rates Circular No. 92/2007, hence, he submits that the *Doctrine of Stare Decisis* mandates that if this court disagreed with the judgment of the co-ordinate bench, it ought to have referred the matter to a larger bench instead of taking a different view on the issue. He, therefore, submits that the judgment passed by this court in MFA No. 44/2024, is *per incuriam* as it failed to follow the ratio laid down

by co-ordinate benches of this court in MFA No. 27/2016 and MFA No. 100/2011.

[7] The learned counsel for the review petitioners further submits that the decisions rendered by co-ordinate benches of this court in MFA No. 42/2017 and MFA No. 105/2017, on which this court relied on while giving the judgment in MFA No. 44/2024, suffers from the fallacy of *sub silentio* and **do not constitute a binding *ratio decidendi* on the issue of levying of terminal charges by railways.**

[8] The learned counsel for the petitioners further submits that the appellants in MFA No. 27/2016 also preferred a review application seeking review of the judgment dated 10.02.2025, passed in M.F.A. No. 27/2016. However, by its order dated 29.09.2026, passed in the Review Petition Nos. 63 of 2025, the co-ordinate bench of this court has dismissed the said review application. He submits that while dismissing the review petition No. 63/2025, the co-ordinate bench of this court has observed that the Railway Board Circular dated 18.09.2007, was not the issue in MFA Nos. 42/2017 and 105/2017, and that said decisions were not placed before the co-ordinate bench of this court while taking up hearing of MFA No. 27/2016. He submits that it also made an observation that even if same would have been produced, it would not have come to the

assistance of the petitioners of that case.

[9] The learned counsel for the review petitioners further submits that this court also erred in relying on the order dated 21.10.2024, passed by the Supreme Court of India in Special Leave Petition (Civil) Diary No. 40703/2024, in as much as said order was a non-speaking order whereby, the said SLP was dismissed in *limine* and as such, it does not have any binding effect and cannot be considered as declaration of law under Article 141 of the Constitution of India.

[10] Under the aforesaid circumstances, the learned counsel for the petitioners submits that it is a fit case to exercise the power by reviewing and setting aside the order dated 17.08.2026, passed by this court in MFA No. 44/2024, and restore the said appeal for fresh hearing.

[11] On the other hand, Mr. D. Rathi, the learned counsel for the respondent has submitted that no grounds for exercising review jurisdiction by this court has been made out by the petitioners in this case for review of the judgment and order dated 17.08.2026, passed in MFA No. 44/2024 by this court.

[12] He submits that merely on the basis of a repetition of old and overruled arguments, a concluded adjudication may not be reopened and under said circumstances, thereview is not maintainable. He

submits that the statute, i.e. the Code of Civil Procedure, 1908, in Order XLVII, prescribes three conditions under which a review is maintainable, i.e., firstly, the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him; secondly, a mistake or error apparent on the face of the record; and thirdly, for any other sufficient reason.

[13] He further submits that there is catena of judgments of the Apex Court where the words "any other sufficient reasons" have been interpreted and it is held to mean a reason sufficient on grounds at least analogous to those specified in the rule. He submits that the judgment of the coordinate bench of this court, passed in MFA No. 27/2016 was never produced before this court during the hearing of MFA No. 44/2024.

[14] The learned counsel for the respondent further submits that the issue of levy of terminal charges was not the main issue in the MFA No. 27/2016. Rather, the main issue involved in MFA No. 44/2024 was whether terminal charges will be levied on all bulk and use commodities. He further submits that admittedly, the judgments of the coordinate bench of this court in MFA No. 42/2017 and MFA No. 105/2017, which were delivered prior to the judgment in MFA No. 27/2016, were not considered, for whatsoever reasons in MFA No.

27/2016. Hence, he submits that this court did not commit any error in relying on the judgment of coordinate bench in MFA No. 42/2017 in passing the judgment which is sought to be reviewed. He, therefore, submits that the present review petition does not merits consideration and may be dismissed.

[15] In support of his submissions, the learned counsel for the respondent has cited the ruling of the Apex Court in the case of ***Kamlesh Verma Vs. Mayawati & Ors.***reported in ***(2013) 8 SCC 320***.

[16] I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

[17] It is a settled legal proposition that review of a judgment may be justified only on the limited grounds which are statutorily recognized and a review proceeding cannot be equated with the original hearing of the case. For the sake of convenience, the provisions contained in Order XLVII of the Code of Civil Procedure, 1908 are quoted herein below: -

Order – XLVII

REVIEW

1. Application for review of

judgment. -

(1) Any person considering himself aggrieved-

(a)by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b)by a decree or order from which no appeal is allowed, or

(c)by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record of for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2)A party who is not appealing from a decree or order may apply for a review

of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation. -The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.] [Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 72 (w.e.f. 1.2. 1977).]

[18] From above it appears that a review will be maintainable only on happening of three contingencies, namely, the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him. Secondly, on the ground of mistake or error apparent on the face of the record. Thirdly, for any other sufficient ground. Further, as submitted by the

learned counsel for the respondent, the Supreme Court of India, in a catena of judgments, has held that the words *"any other sufficient reasons"* mean a reason sufficient on grounds at least analogous to those specified in the Order 47 Rule 1 of the Code of Civil Procedure, 1908.

[19] In the instant case, the main ground for seeking review of the judgment dated 17.08.2026, passed by this court in the MFA No. 44/2024 is that a co-ordinate bench of this court in the MFA No. 27/2016 has taken a different stand regarding imposition of terminal charges. However, it is apparent that the judgment rendered in MFA No. 27/2016 was not referred to by the present petitioners during the hearing of MFA No. 44/2024. Moreover, in the judgment passed in MFA No. 27/2016 the decision of MFA No. 42/2017 as well as MFA No. 105/2017, which were delivered prior in time than that of MFA No. 27/2016, were not referred to.

[20] It appears that this court while arriving at the decision in MFA No. 44/2024 relied upon the judgment of the co-ordinate benches of this court in MFA No. 42/2017 and MFA No. 105/2017 which have categorically held that the terminal charges may be imposed only in those 50 stations where the infrastructure for loading and unloading of goods are there.

[21] Under the facts and circumstances narrated in

the foregoing paragraphs, the reliance on the aforesaid judgments of the co-ordinate benches by this court may not be regarded as an error apparent on the face of record justifying the review of the judgment rendered by this court in MFA No. 44/2026. Neither same may be regarded as the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioners or could not be produced by him.

[22] The other grounds taken by the petitioners for seeking review of the judgment rendered in MFA No. 44/2026 do not merit consideration as this court cannot sit on appeal over its own judgment.

[23] This court is of the considered opinion that the petitioners have failed to make out a case for review of the judgment rendered in MFA No. 44/2026.

[24] In view of the discussions made and reasons stated in the foregoing paragraphs, this court does not find any merit in the instant review application. Accordingly, same is dismissed.

[25] The parties are left to bear their own cost.

JUDGE

Comparing Assistant