IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-
The Hon'ble Justice Madhuresh Prasad
And
The Hon'ble Justice Prasenjit Biswas

R.V.W. 186 of 2024

Sri Samrat Samanta & Ors.
Vs.
Sri Somesh Dhara & Ors.

In
F.M.A. 1271 of 2022

Sri Samrat Samanta & Ors.
Vs.
Sri Somesh Dhara & Ors.

For the Appellants	:	Mr. Sukumar Bhattacharyya, Mr. Sibasis Ghosh, Ms. Oindrila Chatterjee, Ms. Subhangi Bhattacharya
For the Respondents	:	Mr. Animesh Paul
Judgment on	:	17.03.2026

Madhuresh Prasad, J.:

1. The present review application is filed seeking review of judgment dated 05.04.2024 passed in an appeal bearing FMA No.1271 of 2022.

2. The appeal was filed against an order disposing of an application for temporary injunction, holding that the plaintiff/respondent made out a *prima facie* case and the balance of convenience and inconvenience lies in their favour and in the event the injunction is not granted, they would suffer irreparable loss and injury.
3. The review applicant was the appellant in FMA No.1271 of 2022, wherein they contended that an award was already passed by the Lok Adalat in the appellant's Title Suit No.23 of 2011. The subsequent Title Suit filed by the plaintiff/respondent (T.S. No. 170 of 2019) for partition and separation of shares was therefore, not maintainable. The order of temporary injunction passed by the Trial Court was thus, required to be set aside. The Title Suit filed by the plaintiff/respondent seeks nullification of the award of Lok Adalat in the garb of a suit for partition, which is not permissible, in view of Section 21 of the Legal Services Authority Act, 1987. The appellant also raised an issue that a suit was earlier filed by the plaintiff/respondent for similar/identical relief, which was dismissed for default. Rather than seeking restoration of the earlier suit (TS No.486 of 2016), the subsequent suit (T.S. No.170 of 2019) was filed, which was barred by the principle of *res judicata*. The injunction was assailed on these grounds.
4. The plaintiff on the other hand took a plea that they were not made a party to the earlier suit wherein award was passed by the Lok

Adalat and such award is not binding on them. Relying upon an order passed earlier in a First Appeal (FA) 364 of 1977 wherein the Division Bench categorically observed that letter of administration on basis of a compromise is unknown to law and such compromise cannot be given effect, it was also contended that the award was illegal, collusive and void. Therefore, the award was not binding upon the plaintiff and open to challenge.

5. The Division Bench considered the rival submissions in an appeal arising out of the order of temporary injunction, with reference to the various judgments cited at the bar. The objections regarding maintainability was considered and rejected by the Division Bench, in the following terms:

> *"Though all the parties have admitted the factum of compromise having entered therein but the grant of the letters of administration does not reveal such fact. Obviously the observation of this Court in the said appeal was on the basis of an admitted fact which cannot by any stretch of imagination be construed to have nullified or set aside such grant. It is mere an obiter on the proposition of law that the Probate Court being the Court of conscience cannot issue a grant de hors the Will or altering and/or superseding the last wish and desire the maker of the said Will. The grant of the letters of administration is still operative and cannot be perceived otherwise on the basis of such observation. The jurisdiction exercised by the Probate Court as a Court of conscience is limited to the extent of giving sanctity to the genuinity and the authenticity of the Will and cannot travel beyond it. The Probate Court does not decide the title of the parties in the property even if the same forms an integral part*

> *of the estate of the testator and we do not find any embargo in approaching the Civil Court for declaration of title. We are, therefore, unable to accept the contention of the appellant that the defendant/appellant has miserably failed to make out a prima facie case since the arguments were not advanced on the merit of the impugned order. We need not have to delve into it and the points which have been urged is decided as aforesaid.*
>
> *We thus do not find any ground for interference with the impugned order. The appeal fails. All connected applications are accordingly dismissed."*

6. The learned Advocate for the review applicant submitted that once the maintainability issue failed, the Division Bench was under an obligation to call the parties to address on merits of the case. The judgment of the Division Bench therefore, suffers from an error on the face of the judgments since it records that arguments were not advanced on the merits of the impugned order.
7. Submissions have also been advanced regarding correctness of the decision on the point of maintainability relying upon a decision of the Apex Court in the Case of ***Dilip Mehta vs Rakesh Gupta and Others*** reported in ***2025 SCC OnLine SC 2737.*** The judgment is dated 18.11.2025, that is much after the judgment dated 05.04.2024, review of which is sought. Copy of the judgment has been handed over to us.
8. In support of his submission regarding error on the face of the judgment the learned Advocate relied upon judgments of the Apex

Court in the case of ***Board of Control for Cricket in India and Another vs. Netaji Cricket Club and Others*** reported in ***2005 (4) SCC 741, Chairman and Managing Director, Central Bank of India and Others vs. Central Bank of India Scheduled Castes/ Scheduled Tribes Employees Welfare Association and Others*** reported in ***2016 (13) SCC 135, Yatinder Kumar Aggarwal and Others vs. Mukund Swarup and Others*** reported in ***2019 (3) SCC 687.***

9. The learned Advocate for the respondent on the other hand relied upon a decision of the Apex Court in the case of ***The Canara Bank & Ors. Vs. M Michael Raj*** in ***Civil Appeal No.11329* of 2025** to submit that a subsequent declaration of law in another case cannot be made a ground for review.

10. We have considered the rival submissions and citations.

11. The law by now is well settled that the power of review is not to be confused with the appellate power and a review cannot be resorted to for rearguing a matter. The Apex Court has held that an appeal cannot be argued in the garb of a review and a submission regarding correctness of the decision on merits does not come within the scope of a review. The power of review is circumscribed to such cases where there is an error apparent on the face of the record, or where despite due diligence vital material which was in existence could not be placed before the court, while

passing the judgment, review of which is sought. A third circumstance justifying the invocation a review jurisdiction is for any other sufficient reasons. The explanation to order 47 Rule 1, CPC reads:

> *"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."*

12. The provision therefore in unambiguous terms prohibits filing a review petition on the ground of a subsequent judgment, as is sought to be done in the present case.

13. Insofar as the plea of an error apparent on the face of a record we find that there is no such error apparent in the decision of the Division Bench. Reliance placed by the learned Advocate for the petitioner in the case of ***Board of Control for Cricket in India*** *(supra)* has no application to the facts of the present case for the reason that in the said case the Hon'ble Supreme Court considered that a review may be necessitated by invoking doctrine of *actus curiae neminem gravabit*. The law declared therein was in the facts and circumstances of that case wherein the Apex Court found:

> *"93. It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into*

> *consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29-9-2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake."*

14. Such facts do not arise for consideration in the present case.

15. The judgment in the case of ***Chairman and Managing Director, Central Bank of India and Others*** (*supra*) was also rendered in co-relation to the facts arising therein, which are distinguishable from the facts and circumstances of the present case, evident from the following extract of the judgment of the Apex Court:

> *"11. We find adequate force in the aforesaid submission of the learned Attorney General. We have already reproduced those paragraphs of the judgment i.e. paras 26 to 32, wherein after interpreting OM dated 13-8-1997, it is categorically held that this OM does not provide for any reservation. This is so stated in the opening lines of para 34 as well by emphasising that there is no reservation in promotion by selection within Group A posts, which carry an ultimate salary of Rs 5700 per month and it is only concession that applies. This conclusion is followed with the observation that contention of the banks in this behalf has been accepted. In spite thereof, in the very next line of para 34, it is observed: (SC/ST Employees Welfare case [Central Bank of India v. SC/ST Employees Welfare Assn., (2015) 12 SCC 308 : (2016) 1 SCC (L&S) 355] , SCC p. 328)*

> *"34. … Significantly, what follows is that reservation is provided in promotion by selection qua those posts which carry an ultimate salary of less than Rs 5700 per month (pre-revised)."*
>
> *12. It is clearly an error on the face of the record inasmuch as no such consequence follows. In fact, the aforesaid quoted portion is directly in conflict with not only the earlier portion of para 34, but the entire conclusion on the issue on which there is a detailed discussion from paras 26 to 32 and even in earlier paragraphs of the judgment. It is this error, which is apparent on the face of the record viz. the reservation is provided in promotion by selection in respect of posts carrying salary of less than Rs 5700 per month, that has led to further error that such reservation in the matter of promotion is applicable from Scale I upward up to Scale VI."*

16. From reading of the judgment it is obvious that the apex Court found an error apparent on the face of the record. No such error apparent is pointed out by the learned advocate representing the review applicant. Therefore, this judgment also has no application to the facts and circumstances of the present case.

17. The third judgment relied upon by the review applicant ***Yatinder Kumar Aggarwal and Others*** (*supra*) was rendered with reference to facts wherein the judgment under review was passed recording that entire decretal amount admittedly was not paid.

18. The Apex Court took notice of an order dated 17.02.1971 passed by the District Judge holding that the decretal amount was deposited through bank drafts which would be deemed to be in

compliance with the order of the High Court. The appeal against the order passed by the learned District Judge was also dismissed by the High Court. Under such circumstance the defendant/judgment debtor filed the review annexing the various challans showing amounts deposited in the executing court from time to time. In the review proceeding the respondent also could not dispute the fact of such payments being made by the judgment debtor. The Apex Court, therefore, took note of such facts and recalled the order holding that it would not be feasible to sell the property of the defendant/judgment debtor. There is no such admitted position regarding any error apparent on the face of the record arising in the present case. Therefore, there is no scope for the review applicant to rely on decision in ***Yatinder Kumar Aggarwal and Others*** (*supra*).

19. The scope of a review application is well settled. The Apex court, recently, in the case of ***Sanjay Kumar Agarwal v. State Tax Officer*** reported in **(2024) 2 SCC 362** held that power of review cannot be exercised on the ground that the judgment under review is erroneous on merits, as is sought to be made out in the present case. We consider it fruitful to quote from paragraph 16 of the report wherein the gist of earlier decisions as regards scope of review was stated in the following terms:

"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."*

20. This legal position based on decision in the case of ***Sanjay Agarwal*** *(supra)* was considered by the apex court in its order dated 02.09.2025 passed in the case of ***The Canara Bank & Ors.*** (*supra),* relied upon by the learned Advocate for the respondent, wherein the apex Court held:

> *"5. The petitioner having gone into deep sleep for eight long years suddenly woke up from his slumber to file a review petition, obviously, as could be seen from recitals or the*

averments extracted in the impugned order whereby similar employee had been extended the benefit, which seems to have triggered the petitioner to file a review petition or in other words, the subsequent law laid down in case of another employee enlightened the petitioner to file a review petition. In fact, the Review Petition itself is not maintainable inasmuch as Explanation to Order 47 Rule 1 CPC is a complete answer to the same. It clearly prohibits filing of review petition due to subsequent judgment and the expression used thereunder is a complete answer to this proposition which reads thus:

> *"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."*

6. On this short ground alone, the present appeal succeeds. This view would also get fortified by the judgment of this Court in Sanjay Kumar Agarwal v. State Tax Officer, (2024) 2 SCC 362 and also the judgment in 4 State (NCT of Delhi) v. K.L. Rathi Steels Ltd., (2024) 7 SCC 315 whereunder it came to be held as follows:

> *"110. We, thus, hold that no review is available upon a change or reversal of a proposition of law by a superior court or by a larger Bench of this Court overruling its earlier exposition of law whereon the judgment/order under review was based. We also hold that notwithstanding the fact that Pune Municipal Corpn. [(2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274], has since been wiped out of existence, the said decision being the law of the land when the civil appeals/special leave petitions were finally decided, the subsequent overruling of such decision and even its recall, for that matter, would not afford a ground for review within the parameters of Order 47 CPC."*

7. In that view of the matter, the review not being maintainable, it ought not to have been entertained. That apart, we notice, the two earlier bipartite agreements i.e. 08.09.1983 and 10-04-1989, were superseded by 6th bipartite agreement dated 14.02.1995 and under clause 5(c)(ii), the employee would not be eligible for stagnation

> *increment, if he, after accepting the promotion seeks and is granted, reversion after one year from the date of promotion. It is undisputed fact that the petitioner would squarely fall within the expression of this clause and even on merits the petitioner would not be entitled for stagnation increment."*

21. The review applicant has filed the review, trying to make out that decision in the appeal was an erroneous decision. The two judgments considered above in the case of ***Sanjay Kumar Agarwal*** (Supra) and ***The Canara Bank & Ors.*** (Supra) leaves no ambiguity that the review jurisdiction cannot be invoked for rehearing with a view to correction of an order perceived by the review applicant to be an erroneous decision. The review jurisdiction is limited in its purpose as considered above, and cannot be invoked, and arguments advanced as if the same was an appeal in the garb of a review, or in disguise.

22. We therefore find no merits in the review application. The same is dismissed.

23. Urgent Photostat certificate copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)