

**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. 207 of 2024

With

CAN 2 of 2024

BAHARPOTA UPPER PRIMARY SCHOOL

VS.

SANTIMOYEE MANNA & ORS.

In

S.A.T. 373 of 2018

BAHARPOTA UPPER PRIMARY SCHOOL

VS.

SANTIMOYEE MANNA & ORS.

For the Petitioner	:	Mr. Samiran Giri,
For the respondents.	:	Ms. Sonini Chakraborty, Mr. Kaushik Chowdhury, Ms. Soumoyadipa Kana, Mr. Durlav De
Judgment on	:	05.03.2026

Madhuresh Prasad, J.:

1. Heard the learned Advocate for the review petitioner and the learned Advocate for the respondents.
2. When this matter was taken up on 21.01.2026, submissions were advanced on behalf of the review petitioner that the trial Court did not

appreciate that the suit was suffering from defect of parties. The Collector of the Government of West Bengal and the Settlement Department were not made parties to the suit. The suit was decided by array of defendants who were not competent.

3. The review applicant was trying to reagitate issues decided; or omitted to be decided by the trial Court and the first appellate Court. Therefore, on 21.01.2026 when the matter was taken up we recorded a preliminary issue regarding maintainability of a review application.
4. Today when the matter is taken up, the learned Advocate for the review petitioner submits that review petition is maintainable since there is mistake on the “face of the record”. Submissions have been advanced that the School was not the Head Teacher’s personal property. The decree cannot be executed against an employee of the School. The suit therefore, suffered from a defect of parties. The Head Teacher was an employee and not competent to deliver possession. The Collector was thus the proper and necessary party, but not arrayed as a defendant in the suit.
5. Defect of parties being a vital issue going to the root of the jurisdiction and merit would constitute a substantial error which can be considered under Order 47 Rule 1 of the Civil Procedure Code (CPC). The first appellate Court did not address this jurisdictional issue and passed an ineffective decree. Therefore, review was a valid remedy in the circumstance.

6. 9 pages written note of arguments have also been submitted substantially containing these issues.
7. The learned Advocate has relied upon decision/decisions in the case of ***Morshar S/o. Yadaorao Mahaja Vs. Vyankatesh Sitaram Bhedi (D) Thr. Lrs. And. Ors.*** Passed in ***Civil Appeal Nos. 5755-5756 of 2011***. This judgment is relied upon to buttress the submission advanced regarding significance and importance of joining necessary party and that if such necessary party is not impleaded the suit itself was liable to be dismissed.
8. The judgment in the case of ***Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors.*** reported in ***(2010) 7 SCC 417***, has also been relied upon on the same issue. The learned Advocate in this connection has also placed reliance on a decision in the case of ***Kasturi Vs. Iyyamperumal & Ors.*** reported in ***(2005) 6 SCC 733***. Reliance placed on these judgment is only an attempt by the review petitioner to re-argue the issue which is decided by the trial Court, the first appellate Court and in which this Court (in a second appeal) did not find any substantial question of law to be involved; and dismissed the second appeal.
9. The learned Advocate for the review petitioner vehemently submits that the point urged is capable of consideration within the limited scope of review under Section 114 and Order 47 Rule 1 CPC. In this connection he has relied upon decision of the Apex Court in the case of ***Board of Control for Cricket, India & Anr. Vs. Netaji Cricket***

Club & Ors. reported in **AIR 2005 SC 592**. He has also relied upon a decision of a Single Bench of this Court in the case of **Burma Shell, Oil Storage Distributing Company Vs. Labour Appellate Tribunal** reported in **AIR 1955 Cal. 92**. specific reliance is placed on paragraphs 88 to 90 of the judgment in the **Board of Control for Cricket, India** (*supra*). We, however, find that the same does not lend any support in so far as the maintainability of the present review petition to re-argue an issue sought to be canvassed in the present review application.

10. The learned Advocate for the petitioner emphatically submitted that Order 47 Rule 1 CPC, apart from discovery of new and important matter which despite due diligence could not be produced, or on account of a mistake or error apparent on the face of the record; contains yet another ground “or for any other sufficient reason”. The present review petition therefore is covered under Order 47 Rule 1.

11. Decision of the Apex Court in the case of **Board of Control for Cricket, India** (*supra*) (paragraph 90) has considered the expression “sufficient reason” and held that it would depend upon the facts and circumstances of the case. The Apex Court held that the expression is wide enough to include a misconception of fact or law by a Court or even an Advocate. A review may be necessitated by invoking doctrine of *actus curiae neminem gravabit*.

12. It is a trite law that law declared by the Apex Court in a judgment has a correlation to the facts and circumstances in which the same is

stated. The exposition of law was made in relation to the facts arising for consideration before the Apex Court in the case **Board of Control for Cricket, India** (*supra*):

“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.”

13. Such facts do not arise for consideration in the present case and the review has been filed to reargue a matter which according to the learned Advocate for the review applicant was incorrectly decided by the first appellate Court. It is also an admitted fact that the second appeal was also dismissed. The review has been filed in the second appeal. Therefore, decision of the Hon’ble Supreme Court in the case of **Board of Control for Cricket India** (*supra*) has no application to the facts and circumstances of the present case.

14. There is also no scope for the petitioner to rely upon decision in the **Burma Shell** (*supra*). Being a judgment of a learned Single Judge of this Court, the same does not constitute a binding precedent for this Court. Still, we ventured to consider the judgment, and find that in paragraph 21 of the judgment the learned single Judge found an error apparent on the face of the record. The instant case is factually distinguishable. Rather than pointing out any error apparent on the

face of the record the learned Advocate for the review petitioner made an attempt to re-argue the case, which is impermissible.

15. 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 reargue 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.”

16. The learned Advocate for the respondent submitted that an issue regarding alleged nonjoinder of a proper and necessary party was decided by the Trial Court against the plaintiff. The first appellate court also considered and decided this issue, but in favour of the plaintiff. Therefore, factually also it is incorrect for the review petitioner to allege that the issue was not decided by the Courts.

17. We find such submission to be substantiated by the record. The first appellate court held that there is no need to add any person as plaintiff. The first appellate court also held that the School did not have any deed and document to show their right to own the suit property. The first appellate court thus proceeded to grant declaratory relief in favour of the plaintiff and permanent injunction against the defendant. Even in the second appeal this court found no substantial question of law. Thus, there was no scope for filing a review at the second appellate stage, to reargue the matter as an appeal.

18. We find force in submissions of the learned Advocate for the respondent relying upon the judgment of the Hon'ble Supreme Court of India in **S. Madhusudhan Reddy vs. Narayana Reddy & Ors.** Reported in **(2022) 17 SCC 255**, that review jurisdiction may not be exercised on a ground that the decision sought to be reviewed was an

erroneous decision on merits, for that would be the province of a court of appeal.

19. Learned Advocate for the respondent raised another objection referring to the provision contained in Order 3 Rule 4, CPC, and Explanation (a) thereto. Learned Advocate thus submitted that an application for review of a decree or order in the suit is a deemed proceeding in the suit. Therefore, appointment of the Advocate in the suit or as in the instant case, first appellate Court shall be deemed to be in force until determined with the leave of the Court in writing signed by the client or the pleader and filed in Court. In the present case the pleader/advocate who appeared in the first appeal neither filed a vakalatnama in the review application, nor determined his vakalatnama by inscribing no-objection in favour of the learned Advocate filing/arguing the review application. Referring to a decision of ***Tamil Nadu Electricity Board & Anr. Vs. N. Raju Reddiar & Anr.*** reported in **(1997) 9 SCC 736** it is submitted that a failure to obtain no-objection certificate from the erstwhile counsel disentitles the present Advocate/Advocates to file/reargue the review petition.

20. There is no dispute that the review application was filed without no-objection certificate from the learned Advocate who represented the review applicant, in the main appeal. The learned Advocate who filed the review was neither an advocate on record before the first appellate Court, nor did he argue the first appellate Court.

21. Under similar circumstance the Apex Court held in the case of **N.**

Raju Reddiar (*supra*) held:

“1. It is a sad spectacle that a new practice unbecoming and not worthy of or conducive to the profession is cropping up. Mr Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on 24-4-1996. Yet another advocate, Mr S.U.K. Sagar, has now been engaged to file the present application styled as “application for clarification”, on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor was party in the main case. It is salutary to note that the court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on-Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No. 2670 of 1996 in CA No. 1867 of 1992, a Bench of three Judges to which one of us, K. Ramaswamy, J., was a member, had held as under:

“The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-Record when the appeal was heard and decided on merits. The review petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the review petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would not be in the interest of the profession to permit such practice. That apart, he has not obtained ‘No Objection Certificate’ from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the ‘No Objection Certificate’ would be the basis for him to come on record. Otherwise, the Advocate-on-

Record is answerable to the Court. The failure to obtain the 'No Objection Certificate' from the erstwhile counsel has disentitled him to file the review petition. Even otherwise, the review petition has no merits. It is an attempt to reargue the matter on merits.

On these grounds, we dismiss the review petition."

22. We, therefore, find force in the submission of the learned Advocate for the respondent relying upon decision in the case of **N. Raju Reddiar** (*supra*).

23. Based on above consideration, we find that not only the learned Advocate/Advocates were disentitled to file review application without no-objection certificate; but the review is nothing but a desperate attempt by the appellant, who failed to make out any substantial question of law in the second appeal, to reargue the case thereafter, which is not within the scope of review.

24. The Review application is accordingly dismissed.

25. 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.)