

**In the High Court at Calcutta
Ordinary Original Civil Jurisdiction
Original Side**

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya

**RVWO No.2 of 2026
with
ACO No.4 of 2025
in
APO No.240 of 2016
Arising out of
CP No.357 of 2011
IA No.1 of 2026**

***Saltee Infrastructure Ltd.*
Vs.
M/s. Daga Auto Services Private Limited
*and Others***

For the review appellant/applicant	:	Ms. Noelle Banerjee, Adv.
For the respondent no.5	:	Mr. Shaunak Mukhopadhyay, Adv., Mr. Atish Ghosh, Adv., Ms. Antara Dey, Adv.
For the added respondents	:	Mr. Deepesh Sharma, Adv., Mr. Aditya Ratan Tiwary, Adv.
For the respondent no.12	:	Mr. Amritam Mandal, Adv., Ms. Swati Agarwal, Adv.
Heard on	:	20.03.2026 & 08.05.2026
Hearing concluded on	:	08.05.2026
Judgment on	:	22.05.2026

Sabyasachi Bhattacharyya, J.:-

1. Before entering into the merits, a brief history of the facts leading to the review application is required to be noted.

- 2.** M/s. Daga Auto Services Private Limited, the respondent no.1 in the review application, was originally a closely held family company comprised of three branches – Prayag Das Daga, Krishna Das Daga and Lakshman Das Daga (the first and the last of whom have since expired), having 33 per cent shareholding each, and Ranchod Das Daga, having 1 per cent shareholding.
- 3.** The Articles of Association of the company initially did not permit the members to sell their shareholding in favour of third parties. In the year 2010, Prayag Das and Krishna Das, allegedly unilaterally, altered the Articles of Association to permit unconditional sale of shares to third parties, provided the proposed transfer comprised of 75 per cent or more of the shareholding.
- 4.** Subsequently Prayag Das and Krishna Das caused rights issue of additional shares unilaterally to Prayag, his wife Nirmala and Krishna, increasing their collective shareholding to approximately 89 per cent, while reducing Lakshman's shareholding to 11 per cent. The present respondent no.5, who primarily contests the review application, is the widow of Late Lakshman Das Daga and inherited her husband's shares on his demise.
- 5.** Pursuant to the above alteration of shareholding, Prayag, Krishna and Nirmala transferred their shareholding to the review applicant (R/A), Saltee Infrastructure Ltd., and one Parimala Mercantile Private Limited, both third-party companies, in the year 2011.
- 6.** Sushila Daga, the respondent no.5 herein, filed a company petition bearing CP No.357 of 2011 before the Company Law Board (CLB) under Sections 397 and 398 of the Companies Act, 1956 (hereinafter referred to as "the

1956 Act”). Vide Order dated October 13, 2013, the CLB dismissed the said petition, against which an appeal was preferred by Sushila under Section 10F of the 1956 Act, which was disposed of on March 4, 2014 by a co-ordinate Bench of this Court, remanding the matter and directing the CLB to decide the legality and validity of the impugned issue of shares.

- 7.** On remand, the CLB passed an order dated May 26, 2016 declaring the rights issue and allotments made thereunder in favour Prayag, Krishna and Nirmala to be void and invalid. In the said proceedings before the CLB, Saltee and Parimala Mercantile were represented by a different set of counsel than Prayag, Krishna and Nirmala.
- 8.** Being aggrieved by the said order dated May 26, 2016, an appeal was preferred under Section 10F of the 1956 Act by Prayag, Krishna and Nirmala. During pendency of the appeal, the appellants therein took out an application for unconditional withdrawal of the same, citing the advanced age of the appellants, which was allowed by an order dated September 26, 2024 by this Court, thereby dismissing the appeal as withdrawn.
- 9.** On November 13, 2025, Saltee, the R/A, filed an application for recall of the order dated September 26, 2024, which was dismissed on November 21, 2025. The present application seeks a review of the said order dated November 21, 2025.
- 10.** Learned counsel for the R/A contends that the R/A did not have knowledge of the withdrawal of the appeal at the relevant juncture and, only upon coming to know of the same, filed the recall application subsequently, with an additional prayer for transposition of the R/A as appellant in the appeal.

Thus, it is contended that the prayer for transposition was also before the Court while adjudicating the recall application. However, the prayer for transposition was not pressed since the Court taking up the review application, at that juncture, did not have regular determination to take up company matters but only had jurisdiction to decide the prayer for recall of its own order. As such, it is argued that the appropriate course of action for the Court would be to allow the recall application and relegate the R/A to the Bench having regular determination to hear company matters to seek transposition.

- 11.** Learned counsel argues that the order under review was passed by ignoring the provisions of Order XXIII Rule 1-A of the Code of Civil Procedure (CPC), read with Order I Rule 10 thereof which is an error apparent on the face of record.
- 12.** On the scope of review, learned counsel appearing for the R/A cites *Radha Bhattad v. Rashmi Cement Limited*, reported at 2023 SCC OnLine Cal 2570, where it was held by a co-ordinate Bench of this Court that High Courts have obligation under Article 215 of the Constitution to maintain correct records, including the power to correct orders if erroneous.
- 13.** Learned counsel next cites *Y. Venkannachowdary & Ors. v. The special Deputy Collector, Land Acquisition (General), Hyderabad District & Ors.*, reported AIR 1981 AP 232, where a Division Bench of the Andhra Pradesh High Court held that mistake of counsel in not arguing a provision of law is analogous to an error apparent on the face of record, warranting review.

14. Learned counsel further relies on *Tinkari Sen & Ors. v. Dulal Chandra Das & Ors.*, reported at *AIR 1967 Cal 518*, and *Girdhari Lal Gupta v. D.H. Mehta & Anr.*, reported at *(1971) 3 SCC 189*, in support of the proposition that overlooking a well-settled proposition of law or disposal of a matter by the Court without applying its mind to the provision of law which gives jurisdiction to act in a particular way is an error apparent on the face of record, whether by counsel's mistake or by reason of oversight.
15. Thus, it is argued that this Court has ample jurisdiction to review its Order dated November 21, 2025, where the R/A's recall application was dismissed.
16. While arguing on the scope of transposition, learned counsel submits that when the interest of the appellant and one of the respondents is common, the Appellate Court has obligation under Order XLI Rule 4 and Order XLI Rule 33 of the CPC to transpose a respondent having common interest as the appellants, in the event the appeal is sought to be withdrawn. Right of transposition under Order XXIII Rule 1-A, read with Order I Rule 10, it is argued, arises only after the suit is abandoned or withdrawn and is available at any stage of the proceedings, including the appellate stage. The underlying principle is effective adjudication of the *lis* by avoiding multiplicity of proceeding. It is argued that valuable rights cannot be defeated on the technical ground that a suit or an appeal is not live.
17. In support of such contention, learned counsel cites *Vijay Verma V. Indira Warman & Ors.*, reported at *2025 SCC OnLine Del 9478*, and *Noushad v. Sarojam Thankappan & Ors.*, reported at *2018 SCC OnLine Ker 5596*.

18. It is next contended that the provision under Order I Rule 10(2) of the CPC to transpose is available at any stage of the proceeding, including appeal, if necessary *suo motu*, to render complete justice. If the original appellant drops the fight, an additional appellant can be brought in to continue with the appeal, even *suo motu* by the court. For such proposition, learned counsel cites *Kiran Tandon v. Allahabad Development Authority & Anr.*, reported at (2004) 10 SCC 745, and *Smt Saila Bala Dassi v. Smt Nirmala Sundary Dassi*, reported at 1958 SCC OnLine SC 140.
19. *Bhubneswar v. Sidheswar*, reported at ILR (1948) 27 Pat 956, is cited in respect of the powers of the Appellate Court under Order XLI Rules 4 and 33 of the CPC.
20. An appeal being a continuation of the suit, it is submitted that a person may be impleaded even at the appellate stage, as held in *Hardatt Sharma v. Jaikishen Shamlal & Sons & Ors.*, reported at AIR 1983 J&K 29. Order I Rule 10, CPC, it is argued, provides for addition, deletion and substitution of parties including transposition from one status to another so that the subject-matter may be adjudicated in a single *lis*, avoiding multiplicity of proceedings. Such right specifically kicks in when the plaintiff seeks to withdraw a suit under Order XXIII Rule 1. The wide powers in that regard, it is submitted, were laid down in *R. Dhanasundari Alias R. Rajeswari v. A.N. Umakanth & Ors.*, reported at (2020) 14 SCC 1.
21. With regard to the contention that the provisions of Order XXIII Rule 1-A, read with Order I Rule 10, apply to appeals by virtue of Section 107 of the CPC, learned counsel cites *K.K. Abraham v. Joseph Varghese & Anr.*,

reported at *AIR 2003 Ker 1*, and *Govinda Iyer v. Kumar*, reported at *AIR 1980 Mad 232*, in the first of which the Court was dealing specifically with an appeal under Section 10F of the 1956 Act.

- 22.** Learned counsel contends that it has been held by various High Courts that where the plaintiff/appellant seeks to withdraw the appeal while propounding the cause of the defendant/respondent, withdrawal of the appeal should not be permitted without transposition of the said defendant/respondent as plaintiff/appellant. In support of the said argument, learned counsel cites *Basudeo Lahiri v. Rama Lahiri & Ors.*, reported at *2019 SCC OnLine Jhar 993*, *Jethiben v. Maniben & Anr.*, reported at *1983 SCC OnLine Guj 51*, *Jaimala Kunwar & Anr. v. Collector of Saharanpur & Ors.*, reported at *ILR (1933) 55 ALL 825*, *Sm. Ajita Debi v. Musst. Hossenara Begum and others*, reported at *AIR 1977 Cal 59*, and *Butti Veerpal and Ors. v. K. Vijaya Laxmi and Ors.*, reported at *(2006) 4 ALD 441*.
- 23.** Learned counsel for the R/A further contends that in a proceeding under Sections 397 and 398 of the 1956 Act, the applicant acts in a representative capacity and therefore, for the purpose of withdrawal of such proceeding by the petitioner, the consent of the other parties is necessary. Learned counsel cites in such context *Bhagwati Developers Private Limited v. Peerless General Finance Investment Company Limited & Ors.*, reported at *(2013) 5 SCC 455*, *L.R.M.K. Narayanan & Anr. v. Pudhuthotam Estates Ltd. & Ors.*, reported at *1991 SCC OnLine Mad 445*, and *Rai Mathura Prasad v. Hanuman Prasad Bhagat & Ors.*, reported at *1984 SCC OnLine Pat 360*.

- 24.** It is, thus, reiterated by the R/A that the right to withdraw an appeal is not unfettered and cannot be at the cost of defeating the vested right of the respondent, particularly when the right and interest of the respondent is common with the appellant.
- 25.** Learned counsel argues that it was not necessary to file an independent appeal on the part of the R/A since its cause was being espoused, and assurances were given in that regard, by the appellant. It is submitted that like a partition suit, the quasi-partnership nature of the business of the company entitled the R/A to be transposed as appellant.
- 26.** Since the right of the R/A to transpose itself arose only after coming to know of the withdrawal, the dismissal of the recall application by this Court, it is argued, was tainted by an error apparent on the face of the record. Since the appellants could not defeat the rights of the R/A by withdrawing the appeal unilaterally, it was the duty of the court, it is submitted, to transpose the R/A prior to dismissal of the appeal as withdrawn.
- 27.** Learned counsel appearing for the R/A next addresses an order dated August 24, 2016 passed in the appeal, prior to being withdrawn, by a co-ordinate Bench of this Court where it was apparently recorded that the R/A had no objection with the rest of the impugned decree but for the accounting component. However, it is submitted that this Court had recorded while hearing the recall application that it would not enter into the factual aspects of the case. Thus, the scope of the order dated August 24, 2016 is beyond the scope of the present review application. In any event, it is contended that there was no concession on the part of the R/A recorded

in the said order as regards its rights being affected if the appeal was withdrawn. Under Order XLI Rule 33, CPC, it is reiterated, the Court could very well have passed other or further orders even if no appeal was preferred by the respondents against the impugned order. Thus, it was mandatory for this Court, while dismissing the recall application, to consider transposition of the R/A to the category of appellant.

- 28.** Learned counsel for the R/A next submits that the recall application was not dismissed on the ground that the appellants have shown any service of notice of the withdrawal on the R/A. Learned counsel further submits that it is disturbing to note that the appellants who withdrew the appeal now support the case of the other respondents and have taken an interest in coming forward with documents regarding purported service of notice of the withdrawal application, which were not disclosed at the stage of hearing of the recall application.
- 29.** Learned counsel denies that any notice regarding withdrawal was served on the R/A prior to withdrawal of the appeal. It is contended that proper service of notice at the address of the R/A has not been established. Since the address of the R/A, as given in the cause title, does not match the address in the postal slip, the track report regarding service having been effected on the addressee-R/A was erroneous.
- 30.** It is argued that the service on M/s. Daga Auto Services Private Limited, which is an independent juristic entity, could not be equated with service on the R/A, which is a distinct and different company.

- 31.** Again, even if it is assumed that notice was served, the same was sent in May, 2024 whereas the appeal was ultimately taken up and dismissed as withdrawn after six months, in November, 2024. Even assuming that notice was sent, the R/A cannot, thus, be faulted for not appearing on the day when the appeal was taken up.
- 32.** The right of the R/A to be transposed would not evaporate even if notice was served on it, subject only to an explanation of the delay being furnished.
- 33.** Learned counsel next reiterates that there was no clear unequivocal admission on the part of the R/A that it had no objection to the order impugned in the appeal, even as per the findings recorded in the order dated August 24, 2016, passed in the appeal. The R/A clearly objected to a fresh valuation.
- 34.** The purported letter dated December 24, 2024, it is submitted, on which the appellants and present respondent no.5 rely to attribute knowledge of the withdrawal application to the R/A, was a part of the annexures to the petition filed before the NCLT (National Company Law Tribunal), where fraud has been alleged by the R/A.
- 35.** There is no embargo on the company and its shareholder, being the R/A, approaching the same learned Advocate as there is no conflict of interest. It is submitted that there is palpable collusion between the appellants and the respondent no.5, which all the more entitles the R/A to be transposed as an appellant in the appeal. In any event, it is argued that the impugned order under review was not passed on the ground of delay; thus, the said letter becomes insignificant.

- 36.** Per contra, learned counsel appearing for the respondent no.5, which is the primary contesting respondent in the review application, argues that neither the appeal under Section 10F nor the parent application under Section 397 of the 1956 Act were instituted in representative capacity. The language of Section 10F provides for a statutory right of appeal of “any person aggrieved” by the order of the CLB and does not contemplate an appeal being filed in representative capacity of another. The R/A, it is argued, has failed to show any provision of law or precedent in support of the contention that the appeal was filed in representative capacity. Also, no proof of any assurance allegedly given to the R/A by the appellant regarding the appeal has been brought on record.
- 37.** Learned counsel for respondent no.5 next contends that the Section 397 proceeding was instituted by Sushila, the respondent no.5, not in representative capacity on behalf of any other member as contemplated under Section 399(3) of the 1956 Act but on the strength of her requisite qualification shares of 11 per cent, which was sufficient to maintain such application. The said application did not espouse the cause of any other shareholder.
- 38.** In the appeal papers, there is not a single averment to show that the appellants were ever espousing the case of Saltee and Parimala, the latter being always represented by a separate set of counsel before the CLB and this court.
- 39.** It is submitted that the observation in the order of this court dated August 24, 2016, passed in the appeal, categorically recorded that the R/A did not

have any bone of contention with the order assailed in the appeal. The present application is a mere attempt to create a right of appeal in the garb of transposition, at a juncture when such appeal would be hopelessly time-barred.

- 40.** There was no ground common to the appellants and the R/A, it is contended. Whereas the R/A could at best challenge the setting aside of the transfer of shares in its favour, the cause of action of the appellants in the appeal was the setting aside of rights issued upon illegal alteration of the Articles of Association. Hence, there being no common ground, it cannot be said that the appellant represented the R/A or its interest in any manner in the appeal.
- 41.** Learned counsel points out that the postal consignment sent to the R/A was delivered at the CC Block Post Office in Salt Lake (also known as Bidhannagar) whereas R/A's registered office is situated at AE Block, Salt Lake, which is serviced by the CC Block Post Office, in which regard respondent no.5 seeks to rely on a communication by the Sub-Postmaster, Bidhannagar CC Block Post Office. Moreover, the postal costs of Rs.29.50p is shown in all the receipts in respect of the R/A, Parimala and M/s. Daga Auto Services Pvt. Ltd., thus indicating that the same set of documents were served on all of them.
- 42.** The service letter dated May 14, 2024, including the withdrawal application, would also show that the R/A was in receipt of the same. Since the R/A has admittedly been in control of M/s. Daga Auto Services Pvt. Ltd. after purchase of the shares of the said company from the appellants, the receipt

of the letter, accompanied by a copy of the withdrawal application, ought to be construed as service on the R/A as well.

43. Moreover, it is submitted that the withdrawal application was running in the list of this Court, as evident from the date mentioned in the endorsement of the Department of this regard, for some time but the R/A, despite receipt of the notice, chose to remain absent at the time of hearing of the same. It is submitted that the learned advocate for respondent no. 5 repeatedly wrote to the respondent no.1-company informing of the withdrawal of the appeal and seeking rectification of its register and records as per the CLB order, which clearly shows knowledge of the R/A, which was in full control of the respondent no. 1-company at that juncture.
44. The R/A, it is argued, chose to be a fence-sitter and its conduct disentitles it from any relief.
45. Learned counsel for respondent no.5 next proceeds to deal with and distinguish the judgments cited by the R/A, apart from *Bhagwati Developers (supra)*¹, on which it also relies, in view of the Hon'ble Supreme Court having observed therein, upon taking cognizance of the prior round of litigation, that the High Court Division Bench had held that as the appeal was no longer pending, the question of transposition of parties did not arise. The Hon'ble Supreme Court did not interfere with such finding; rather, it directed the appellants therein to file independent appeals.
46. Learned counsel relies on *Sanjay Kumar Agarwal v. State Tax Officer*, reported at (2024) 2 SCC 362, to argue on the scope of review. In the present

¹ ***Bhagwati Developers Private Limited v. Peerless General Finance Investment Company Limited & Ors.*, reported at (2013) 5 SCC 455**

case, it is argued, no ingredient of review is applicable. Moreover, since the selfsame arguments were dealt with and turned down while dismissing the recall application of the R/A, this is effectively a second review, which is not maintainable in law.

47. In the process of filing of multiple applications by the R/A, it is submitted, respondent no.5-Sushila, who is the victim of dilution of her shareholding in the respondent no.1-company, is being dragged into litigation, despite being an octogenarian widow, while the R/A is continued to enjoy complete control over the company. Accordingly, learned counsel prays for the dismissal of the review application.

48. Upon considering the respective submissions of the contesting parties, the following issues fall for consideration in the present adjudication:

- (i) *Whether transposition of a respondent to the category of appellant can be allowed post-withdrawal of the appeal;*
- (ii) *Whether the appeal under Section 10F of the Companies Act, 1956 was filed by the appellants in representative capacity of the review applicant;*
- (iii) *Whether the review applicant had prior notice of withdrawal of the appeal;*
- (iv) *Whether the review applicant is barred by estoppel and constructive res judicata from seeking transposition at this stage;*
- (v) *Scope of review – how far the questions urged can be re-agitated.*

49. The above issues are dealt with hereinbelow:

(i) **Whether transposition of a respondent to the category of appellant can be allowed post-withdrawal of the appeal**

50. In order to examine this issue, a scrutiny of the relevant provisions of law, which are reproduced below, is required:

“Order I

10. Suit in name of wrong plaintiff.—(1) *Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.*”

“Order XXIII

1A. When transposition of defendants as plaintiffs may be permitted.—*Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.*”

51. Courts have recognized the general power of the suit court to transpose defendants to the category of plaintiffs within the broad ambit of the power of addition/substitution/deletion of parties conferred under Order I Rule 10 of the CPC.

52. Order XXIII Rule 1-A of the CPC, on the other hand, comes under the heading “Withdrawal and Adjustment of Suits” and provides for transposition of a defendant as a plaintiff in the specific and limited context

when the plaintiff seeks to withdraw or abandon the suit and the defendant applies to be transposed. Thus, while Order I Rule 10 is the genus, Order XXIII Rule 1-A is a species thereof, providing for the specific requirement of an application being made by the defendant and a situation where the plaintiff seeks to withdraw or abandon the suit, to enable the provision of Order I Rule 10 of the CPC to apply for the purpose of transposition.

53. Two important distinctions between the general power of transposition under Order I Rule 10 and the special power under Order XXIII Rule 1-A are to be noted here.
54. First, whereas Order I Rule 10 can be invoked even *suo moto* by the court, with or without any application by the party seeking to be transposed (provided it appears to be just to the court or a wrong person has been impleaded), Order XXIII Rule 1-A is triggered only on an application being filed by the party seeking transposition. Secondly, although transposition in general can be directed by the court under Order I Rule 10 at any stage of the suit, for transposition to be effected under Order XXIII Rule 1-A, the suit must be withdrawn/abandoned by the plaintiff.
55. The question which essentially arises at this juncture is whether transposition can be permitted post-withdrawal of the suit or appeal, as the case may be.
56. Two important phrases used in Order XXIII Rule 1-A acquire importance in the context - “*a suit is withdrawn or abandoned by a plaintiff*” and “*a defendant applies to be transposed as a plaintiff under rule 10 of Order I*”.

57. Hence, the stage where transposition can be allowed under the aforesaid provision is “where a suit is withdrawn or abandoned”, used in present tense, thus indicating that the suit has to be alive when such transposition is effected. In any event, unless there is a live litigation, there would not arise any question of transposition *post facto* in a dead *lis*. Unless there is any pending suit at the point of time when transposition occurs, there would be no foundational proceeding where such transposition would take place.
58. Again, Rule 1-A of Order XXIII provides that such transposition has to be applied for *under Rule 10 of Order I*, the latter rule conferring such power on the court “at any stage of the proceedings”. Thus, there has to be a live proceeding for such transposition to be effected.
59. The expression “any stage” refers to the proceeding and cannot be extended to a stage after the proceeding is done and dusted.
60. The R/A relies heavily on *Bhagwati Developers (supra)*². The context of the said case is to be examined to ascertain the tenability of such submission.
61. In the said case, the Division Bench of the concerned High Court, vide orders dated November 16 and November 18, 1993, allowed similar applications dismissing two appeals as withdrawn. Immediately thereafter, on December 22, 1993, the appellant before the Supreme Court filed the two applications for recall of the said orders of dismissal of the appeals and for transposing itself as appellant therein. The said application was rejected on February 2, 1995, against which appeals were preferred before the Hon’ble Supreme Court. The Hon’ble Supreme Court disposed of the said appeals on

² ***Bhagwati Developers Private Limited v. Peerless General Finance Investment Company Limited & Ors.*, reported at (2013) 5 SCC 455**

April 26, 1996, observing that the appellant/transposition applicant *may prefer independent appeals* against the judgments and orders dated January 13, 1992/January 14, 1992 assailed in the appeals which were dismissed as withdrawn.

62. The said order, it is recorded by the Hon'ble Supreme Court in the cited judgment, had been passed after hearing the respondents before the Hon'ble Supreme Court on the basis of the suggestions made and concession offered by them to the effect that if the appellant preferred such appeals in the High Court even then, the respondents would not raise any objection on the ground of limitation and that they would not also object on the ground of *locus standi* of the consenting shareholders. It is in such context Hon'ble Supreme Court observed in *Bhagwati Developers (supra)*³ that the appellant before it, having acted on the concession given by the respondents themselves, was entitled to maintain the appeal.
63. Thus, even in the said case, the original order dismissing the appeals as withdrawn were never recalled but leave was granted to the transposition applicant to prefer fresh appeals against the original impugned order of the company court, that too in view of the specific concession given by the respondents therein.
64. Secondly, the Hon'ble Supreme Court took note of the fact that the parent application under sections 397 and 398 of the 1956 Act, which was the genesis of the challenge, was filed in representative capacity with the consent of the other shareholders, alleging mismanagement and oppression.

³ ***Bhagwati Developers Private Limited v. Peerless General Finance Investment Company Limited & Ors.*, reported at (2013) 5 SCC 455**

- 65.** In *L.R.M.K. Narayanan (supra)*⁴ and *Rai Mathura Prasad (supra)*⁵, the Hon'ble Supreme Court was considering applications under Sections 397/398 of the 1956 Act, the paradigm of which provisions would be discussed presently under the next issue.
- 66.** Suffice to say that, as opposed to a class action, an application under Sections 397/398 may be either in representative capacity or in the individual capacity of a shareholder having one-tenth share in the company.
- 67.** From the four corners of the application under Sections 397/398 filed before the CLB in the instant case and/or the materials produced before us, it is not borne out that the application was filed by Sushila, respondent no.5 herein, in representative capacity of other shareholders or consent was taken by her in that regard under Section 399(3) of the 1956 Act. Rather, the said application was filed on the strength of Sushila's 11 per cent which, being above 1/10th of the share capital, qualified her to maintain the application under Section 399 (1) (a) of the 1956 Act in her own right.
- 68.** Even from the cause of action espoused therein, it would be evident that it was personal to Sushila and not in representative capacity. It was Sushila who alone was aggrieved by depletion of her original equal (33 per cent) shares with the other groups of shareholders in M/s. Daga Auto Service Pvt. Ltd., by virtue of the unlawful inflation of shares of the other groups of shareholders by unilateral share issued by them in their own favour and alteration of the Articles of Association to carve out an exception in respect

⁴ *L.R.M.K. Narayanan & Anr. v. Pudhuthotam Estates Ltd. & Ors., reported at 1991 SCC OnLine Mad 445*

⁵ *Rai Mathura Prasad v. Hanuman Prasad Bhagat & Ors., reported at 1984 SCC OnLine Pat 360*

of the restriction to transfer to third parties if the shareholders have 75 per cent or more of the shareholding.

- 69.** Thus, does not arise any question of applicability of the ratio laid down in the aforesaid reports, in all of which the applications under Section 397/398 were filed in representative capacity with consent of other shareholders.
- 70.** In *R. Dhanasundari's* case⁶, the Hon'ble Supreme Court merely observed that in order to avoid multiplicity of proceedings, the power to transpose under Order I Rule 10 kicks in when the plaintiff seeks to withdraw the proceeding under Order XXIII Rule 1. In *Vijay Verma (supra)*⁷, the applicability of such power was extended to the appellate stage, which is not in dispute.
- 71.** However, with utmost respect, this court cannot agree with proposition laid down by the Kerala High Court in *Noushad (supra)*⁸. The ratio therein, that the right of transposition cannot be withheld on the ground that the suit is not alive, cannot be accepted on a conjoint reading of Order XXIII Rule 1-A and Order I Rule 10 of the CPC. Although the right of transposition under the former provision arises only at the juncture of withdrawal of the suit, it would be absurd to say that even after the withdrawal of the suit/appeal, a defendant/respondent can be transposed to the category of plaintiff/appellant in a non-existent and deadwood litigation.

⁶ ***R. Dhanasundari Alias R. Rajeswari v. A.N. Umakanth & Ors.*, reported at (2020) 14 SCC 1**

⁷ ***Vijay Verma V. Indira Warman & Ors.*, reported at 2025 SCC OnLine Del 9478**

⁸ ***Noushad v. Sarojam Thankappan & Ors.*, reported at 2018 SCC OnLine Ker 5596**

- 72.** The general proposition laid down in *Kiran Tandon (supra)*⁹ and *Smt Saila Bala Dassi (supra)*¹⁰, to the effect that the provision of Order I Rule 10 is available at any stage of the proceeding, including appeal, is not also in dispute here. The context of *suo motu* exercise of such power under Order I Rule 10(2) is not disputed; however, in view of the specific stipulation in Order XXIII Rule 1-A that the right of transposition accrues on an application being made, the question of this Court *suo motu* transposing the R/A, without there being any application by the R/A being on record at the time of dismissal of the appeal, cannot be a tenable proposition in law.
- 73.** Even as per the language of Rule 1-A of Order XXIII, the relevant point of time when an application for transposition is to be considered is when the suit is withdrawn or abandoned.
- 74.** In *Bhubneswar (supra)*¹¹, the matter pertained to an action by a guardian *ad litem* and the misdeeds of such guardian, in which specific context an application for transposition was made to protect the interest of the ward. The said ratio is patently distinguishable on facts here.
- 75.** In *Hardatt Sharma (supra)*¹², the consideration was in respect of the impleadment of parties and not transposition as such. In the case of a partnership firm, the plaintiff had fraudulently obtained a consent decree without impleading some of the partners in the said case, which is distinguishable from the facts of the present case.

⁹ ***Kiran Tandon v. Allahabad Development Authority & Anr.*, reported at (2004) 10 SCC 745**

¹⁰ ***Smt Saila Bala Dassi v. Smt Nirmala Sundary Dassi*, reported at 1958 SCC OnLine SC 140. *Bhubneswar v. Sidheswar*, reported at ILR (1948) 27 Pat 956**

¹¹ ***Bhubneswar v. Sidheswar*, reported at ILR (1948) 27 Pat 956**

¹² ***Hardatt Sharma v. Jaikishen Shamlal & Sons & Ors.*, reported at AIR 1983 J&K 29**

- 76.** In *K.K. Abraham (supra)*¹³, the facts were distinct and different from the present case. In the said case, the application for setting aside the withdrawal and transposition was made on the very day when the appeal was withdrawn. Moreover, the context was that the party seeking to be transposed argued that the appellant-wife had already separated from him and had no right in respect of the suit property. Thus, the said judgment is clearly distinguishable from the present context.
- 77.** In *Govinda Iyer (supra)*¹⁴ the matter pertained to a partition suit, where all parties, including the defendants, stand on the footing of a plaintiff and the considerations for transposition are different.
- 78.** In fact, in the said judgment, even in the backdrop of a partition suit, the transposition application was ultimately dismissed on the ground that it would lead to widening the scope of the appeal.
- 79.** Again, in *Basudeo Lahiri (supra)*¹⁵, also cited by the R/A in the present case, the matter arose out of a probate proceeding. The judgment in such a proceeding is in the nature of a judgment *in rem* and, as such, has wider ramifications than a personal cause of action *in personam*. The endeavour of a testamentary court, which is a court of judicial conscience, is to give effect to the last wishes of the late lamented testator. In such context, even if an individual does not wish to proceed with the probate application, the probate court ought to take into consideration whether it could transpose the legatees or other interested parties to sustain the cause of action. However, such distinguishing factor is completely absent in the present

¹³ ***K.K. Abraham v. Joseph Varghese & Anr., reported at AIR 2003 Ker 1***

¹⁴ ***Govinda Iyer v. Kumar, reported at AIR 1980 Mad 232***

¹⁵ ***Basudeo Lahiri v. Rama Lahiri & Ors., reported at 2019 SCC OnLine Jhar 993***

case. Moreover, in the said case, the transposition application was made during pendency of the suit, as opposed to the instant case, where the transposition was sought by the R/A much after disposal of the appeal.

- 80.** In *Jethiben (supra)*¹⁶, the application for transposition was also made before the suit was dismissed as withdrawn. Moreover, the interest of the defendant seeking transposition was identical to that of the plaintiff, as opposed to the present case.
- 81.** In *Jaimala Kunwar (supra)*¹⁷, the suit was brought by the Collector in representative capacity on behalf of two Hindu widows, in which context it was held that the next reversioner to the estate ought to be added as plaintiff if the Collector was permitted to withdraw the proceeding. In the present appeal, however, no such representative capacity has been established at all.
- 82.** In *Sm. Ajita Debi (supra)*¹⁸ transposition was held to be permissible if there was affinity or identity of interest between the plaintiffs and some of the defendants. Moreover, it was held that the plaintiff could not withdraw the suit if an application for transposition was filed. Such identity of interest of the appellants and the R/A in the present case, either before the CLB or before this court, is completely absent. Also, as opposed to the said report, in the instant case, no transposition had been filed when the appeal was withdrawn.

¹⁶ *Jethiben v. Maniben & Anr.*, reported at 1983 SCC OnLine Guj 51

¹⁷ *Jaimala Kunwar & Anr. v. Collector of Saharanpur & Ors.*, reported at ILR (1933) 55 ALL 825

¹⁸ *Sm. Ajita Debi v. Musst. Hossenara Begum and others*, reported at AIR 1977 Cal 59

- 83.** In *Butti Veerpal (supra)*¹⁹, the matter also arose from a partition suit, in which all parties had the characteristics of a plaintiff and the cause of action for partition subsisted in the defendants even if the plaintiffs sought to withdraw the suit. In any event, in the said case, there was no case of withdrawal but the plaintiffs were held not to pursue the suit diligently.
- 84.** Thus, none of the above judgments cited by the R/A, which are distinguishable both on facts and in context from the instant *lis*, come to the aid of the R/A.
- 85.** Hence, this issue is decided against the R/A, by holding that an application for transposition in an appeal cannot be made post-withdrawal of the appeal, particularly keeping in view the inordinate delay occasioned by the petitioner in seeking such transposition, despite having notice of the withdrawal. The question of notice will be dealt with more elaborately under Issue No.(iii).

(ii) Whether the appeal under Section 10F of the Companies Act, 1956 was filed by the appellants in representative capacity of the review applicant

- 86.** A perusal of the relevant provisions would be fruitful in this regard.
- 87.** Sections 397, 398 and 399 of the 1956 Act are set out below:

“397. APPLICATION TO TRIBUNAL FOR RELIEF IN CASES OF OPPRESSION--(1) *Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Tribunal for an*

¹⁹ *Butti Veerpal and Ors. v. K. Vijaya Laxmi and Ors.*, reported at (2006) 4 ALD 441

order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the 1 Tribunal is of opinion- (a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members ; and (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up ; the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

398. APPLICATION TO TRIBUNAL FOR RELIEF IN CASES OF MISMANAGEMENT--*(1) Any members of a company who complain –*

(a) that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ; or

(b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors or manager or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ; may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the 1 Tribunal is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the 1 Tribunal may, with a view to bringing to an

end or preventing the matters complained of or apprehended, make such order as it thinks fit.

399. RIGHT TO APPLY UNDER SECTIONS 397 AND 398--*(1) The following members of a company shall have the right to apply under section 397 or 398 :*

(a) in the case of a company having a share capital, not less than one hundred members of the company or, not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares ;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(2) For the purposes of sub-section (1), where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(3) Where any members of a company are entitled to make an application in virtue of sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

(4) The Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to the Tribunal under section 397 or 398, notwithstanding that the requirements of clause (a) or clause (b), as the case may be, of sub-section (1) are not fulfilled.

(5) The Central Government may, before authorising any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable for the payment of any costs which the Tribunal dealing with the application may order such member or members to pay to any other person or persons who are parties to the application.”

- 88.** It is to be noted that there is a distinction between a class action which, although recognized in company jurisprudence even during subsistence of the 1956 Act, was formally introduced as a statutory provision under Section 245 of the Companies act, 2013, and an application alleging oppression/mismanagement under Sections 397 and 398 of the 1956 Act. Whereas in case of the former, by its very nature, it is a representative action, in case of the latter, such an application may either be in representative capacity of other shareholders or espouse the individual cause of action of the applicant. The scheme of the relevant provisions, being Sections 397 to 399 of the 1956 Act, clearly indicates it.
- 89.** Section 397 permits any member of the company to complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members and to prefer an application for appropriate orders under the said provision, whereas Section 398 permits any member of the company who complains of mismanagement of the company by conduct of the affairs thereof prejudicial to public interest or interest of the company or by affecting material change, not being a change brought in the interest of any creditor, debenture holder or class of shareholders of the company, to have taken place in the management or control of the company, to prefer such application.
- 90.** Both Sections 397 and 398, however, are subject to the rider that the applicant member must have a right to apply under the said provisions by virtue of Section 399, which is an umbrella provision.

- 91.** Section 399(1)(a) *inter alia* provides that in the case of a company having a share capital, an individual member can apply under Sections 397 and 398 only when such member has not less than 1/10th of the issued share capital of the company, provided that applicant has paid off calls and other sums due on his/her shares. The other parameters in Section 399 are attracted only when multiple members apply. Thus, in order for an individual member, in his/her own capacity, to maintain an application under Section 397/398, he/she has to have shareholding of 1/10th or more of the issued share capital of the company.
- 92.** Sub-section (3) of Section 399 stipulates that where any members(in plural) of a company are entitled to make an application by virtue of sub-section (1), any one or more of them has to obtain the consent in writing of the rest for making an application “on behalf and for the benefit of all of them.” Thus, in a company having share capital, if any members seek to make an application in representative capacity, they have to obtain the consent of other shareholders who they seek to represent, in order for such application to partake a representative character vis-à-vis the other shareholders.
- 93.** However, if an individual member of such company applies on the strength of his/her having equal to or more than one-tenth share and no such consent is taken, such member is eligible to maintain the application in her individual capacity which, then, would not partake the character of a representative application.
- 94.** Such distinction becomes vital in the present case, since Sushila, respondent no.5 herein, had 11 per cent share through her deceased

husband in the company at the relevant juncture and nothing has been brought on record to show that she had ever taken any consent from the other members (which was, of course, impossible since her very grievance was against the other members) or preferred the application under Sections 397 and 398 in representative capacity. Hence, in the instant case, even the parent proceeding under Section 397/398 of the 1956 Act, from which the appeal under Section 10F of the said Act arose, had been filed by Sushila in her individual capacity and not in representative capacity of other members.

- 95.** Another aspect of the paradigm created by the said three Sections is worth considering. Sections 397 and 398, read with Section 399, conceive only the applicant(s) to act in representative capacity, not the respondents. Notably, the original appellants in the appeal under Section 10F were respondents in the proceeding under Sections 397 and 398; thus, they could not have acted in representative capacity of the R/A or for anyone else, for that matter, either.
- 96.** Moreover, Section 10F of the 1956 Act contemplates an appeal against any order of the CLB by “any person aggrieved”. Hence, the scope of such an appeal is limited to a person aggrieved, which cannot be expanded to a representative capacity. To be “aggrieved”, the character of the cause of action for the appeal has to be individual and not representative.
- 97.** Even otherwise, the interests/grounds on which the R/A and the original appellants could respectively be aggrieved are distinct and different. Whereas the scope of grievance of the appellants would pertain to the CLB setting aside the rights issued unlawfully to increase the share capital of the

appellants as opposed to Sushila and the preceding alteration in the Articles of Association to facilitate the same, the scope of grievance of the R/A-Saltee would be restricted to the transfer of such shares by the appellants in its favour and the validity thereof. Thus, the grounds which could be espoused by the appellants and the R/A respectively in the appeal were not common but distinct and different, thereby ruling out the possibility of any common representation by both.

- 98.** Again, before all fora, the appellants and the R/A were represented by different sets of counsel, which holds true not only for the CLB but in the appeal as well.
- 99.** The reliance of the R/A on Order XLI Rule 33 of the Code of Civil Procedure is completely misplaced. The said provision deals with powers of the court and does not carve out any right of the parties to an appeal. The appellate court, under the said provision, has power not only to pass any decree or to make any order which ought to have been passed or the case may require, but such power may be exercised notwithstanding that the appeal is as to part only of the decree and also may be exercised in favour of all or any of respondents or parties, although such respondents may not have filed any appeal or objection. However, the converse is not true, that is, the powers conferred on the appellate court to do complete justice cannot be read as an automatic entitlement of the respondents to challenge a judgment, decree or order without preferring any appeal against the same, merely by riding on the back of the appellant.

100. Insofar as Order XLI Rule 4 of the CPC is concerned, where there are more plaintiffs or more defendants than one in a suit and the decree appealed from “proceeds on any ground common to all the plaintiffs or to all the defendants” and any of them appeals from the whole decree, the appellate court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be. The said provision also pertains to the power of the court and cannot be read as an automatic entitlement of the respondents. Moreover, for the said provision to apply, the grounds between the parties have to be common, which is not the case here.

101. That apart, not a single scrap of paper has been brought on record by the R/A to vindicate its contention that it was assured by the appellant that the interests of the R/A in the appeal would be espoused or taken care of by the appellants.

102. On the contrary, in the order dated August 24, 2026 passed in the appeal, a coordinate Bench recorded that learned counsel appearing on behalf of the respondent nos. 7, 9 and 10 therein (including the R/A) although supported the findings of the Company Law Board (in the decision impugned therein), but had objected to a fresh valuation being made. Such objection was, in fact, turned down by the court on the ground that fresh valuation had become necessary consequent upon the cancellation of the allotment of 20,000 shares.

103. Thus, learned counsel for the R/A had categorically submitted before the Appellate Court at that juncture that the R/A supports the findings of the CLB. As such, the R/A cannot now resile from that position and mount a

challenge to the said order. Also the said concession clearly shows that the appellants, who had challenged CLB order and were prosecuting the appeal, could not have any common interest or ground with the R/A, which submitted before the Court in positive terms that it supported the findings of the CLB.

104. In view of the above, the argument of R/A that the appeal was filed by the appellants in representative capacity of the R/A cannot be accepted and is hereby turned down.

(iii) Whether the review applicant had prior notice of withdrawal of the appeal

105. The following features mark the present case:

- (a) Notice of withdrawal of the appeal was sent to the R/A (Saltee), as borne out by the postal receipt and the track report, at its address at AE Block, Salt Lake (Bidhannagar), which is serviced by the CC Block Post Office. From the track report, it is evident that the postal consignment was delivered at the Salt Lake CC Block SO;
- (b) From the postal receipts, it is seen that the same postal tariff was paid as in respect of the postal articles served on the other parties, who have not disputed receipt of the same, This rules out the insinuation of the R/A that no copy of the withdrawal application was sent to it;
- (c) R/A (Saltee), by dint of its purchase of shares, has been in control of respondent no.1-company at the relevant juncture. Thus, the service of the withdrawal application on the respondent no.1-company, which is

not disputed, tantamounts to service on the R/A. Hence, the ignorance feigned by the R/A is belied on such count;

- (d) The Advocate's letter dated December 4, 2024, addressed to respondent no.1, also suffices to attribute knowledge of the withdrawal application to the R/A, coupled with the service letter dated May 14, 2024 enclosing the withdrawal application.

106.In the above backdrop, it is established clearly that the R/A had sufficient notice of the appellants' intention to withdraw of the appeal much before the appeal was actually dismissed as withdrawn.

107.Moreover, the application for withdrawal was pending since long in the list of this Court before being disposed of. Ordinarily, publication in the cause list is also deemed to be sufficient notice to all parties, particularly if they have already appeared in the proceeding at any point of time.

108.The R/A has raised a question as to whether *post facto* filing of the affidavit of service and postal documents at the review stage is permissible. However, it is the R/A which alleges for the first time in the review application that no notice of withdrawal was ever served on it, thus inviting the court to enquire into the veracity of such allegation, for which it was absolutely essential that the relevant documents in that regard were produced before this Court.

109.Also, the concerned affidavits of service which were taken on record were all affirmed before the Oath Commissioner prior to the date of dismissal of the appeal, and not subsequently, which goes on to establish that those could not have been manufactured for the purpose of the present review.

110. Hence, this Court comes to the conclusion that the R/A had ample prior notice of the withdrawal of the appeal, despite which it chose not to appear or file any transposition application till the dismissal of the appeal as withdrawn.

111. Even if it is deemed that the R/A had notice six months earlier than the date on which the appeal was actually dismissed as withdrawn, fact remains that no application for transposition was taken out by it in the interregnum, nor was the respondent diligent enough to watch the cause list or appear at the time when the withdrawal application was taken up.

112. Thus, this issue is also decided against the R/A.

(iv) Whether the review applicant is barred by estoppel and constructive res judicata from seeking transposition at this stage

113. As discussed earlier, in the order dated August 24, 2016 passed in connection with the appeal, it was categorically recorded by a co-ordinate Bench of this Court that not only did the R/A abstain from raising any objection to the CLB order impugned in the appeal, but it was positively asserted that it “supports the findings” of the CLB. Hence, the R/A cannot be permitted now to resile from such position and do a *volta face* by seeking to have common ground with the appellant to challenge the order of the CLB. From the said recording of Court, which has never been challenged before the concerned Bench by the R/A at any point of time, it is evident the R/A conceded to the position that it had no grievance to the order impugned

in the appeal. Hence, it was barred by the principle of *estoppel* as well as *res judicata*, which operates at different stages of the same proceeding, to seek a transposition or pray for prosecuting the appeal even on the date when it was dismissed as withdrawn.

114. Secondly, despite having notice of the withdrawal application and the withdrawal application appearing in the list for some time, not only did the R/A choose not to appear at the time of hearing of the same, no transposition application was filed at any point of time during pendency of the appeal, even from the date of its knowledge of the proposed withdrawal.

115. Thirdly, the prayer for transposition, although apparently a part of the recall application which was dismissed by the order under review, was not pressed at all by learned counsel for the R/A at the time of hearing of the recall application. It is well within the rights of a party to abandon any of its prayers made in an application at that time of arguments. In the order under review, there is not an iota of observation as to any argument having been advanced by the R/A pressing its prayer for transposition. Apart from the fact that it was too late in the day to make such prayer even at the recall stage, much after the withdrawal of the appeal, since the said prayer was not pressed at that juncture, the R/A is barred by the principle of *estoppel*/waiver from re-agitating the point long after the limitation period of filing a review application, at this belated stage. Thus, although the delay in filing the review petition might have been condoned, the above circumstances invalidate the turnaround of the R/A now.

116. An insinuation has been made at the stage of arguments by the R/A that, in any event, the transposition prayer could not be pressed before this Bench at the time of moving the recall application, since this Bench did not have regular determination to hear company matters at that juncture. Such argument is flimsy, to say the least. While taking up the recall application, this Court was in *seisin* of the order sought to be recalled. Thus, it was well within the entitlement of the R/A to pray for transposition, if it wanted a recall of the order. If the recall application were to be allowed, the court would be empowered to revisit the order under recall, whereby the appeal was dismissed as withdrawn, and to pass all consequential orders necessary for the ends of justice. The position then would be to take the clock back to the status of the appeal immediately prior to its dismissal. Thus, in such event, the court would definitely not be powerless to grant transposition, if the R/A was otherwise entitled to it in law. Hence, while taking up the recall application, the lack of regular determination of the concerned Bench to take up company matters on that day could not fetter the court from revisiting the order under recall and to consider the position as on the date of such order of withdrawal of the appeal. Hence, the said pretext for not pressing the transposition prayer cannot be accepted.

117. In such view of the matter, this Court comes to the conclusion that the R/A is barred by the principles of *estoppel* and *res judicata*/constructive *res judicata* from re-agitating the self-same issues which have already been decided on merits and set at rest at the time of adjudicating the recall application. At best, the R/A could have preferred a challenge against the

order dismissing the recall application on the ground of error of law. However, the review jurisdiction is not the appropriate forum to re-agitate the self-same issues, already decided on merits while dismissing the recall application.

(v) Scope of review – how far the questions urged can be re-agitated

118. The respondent no.5 cites *Sanjay Kumar Agarwal (supra)*²⁰, where the scope of review was discussed extensively. Such scope is limited to Order XLVII Rule 1 of the CPC and is restricted to error apparent on the face of the record, discovery of new material and/or grounds akin thereto.

119. In *Radha Bhattad (supra)*²¹, a co-ordinate Bench of this Court was deciding on an entirely different aspect of the matter. It is not in doubt that the High Courts, being Courts of Records, have ample jurisdiction under Article 215 of the Constitution of India to correct their records. However, such power cannot be used as a substitute of the review jurisdiction at the instance of a particular party. The said power is vested in the Courts, to rectify patent and palpable errors in the records, and cannot be seen as a matter of right of the parties to the litigation to justify an otherwise non-maintainable review application.

120. In *Y. Venkannachowdary (supra)*²², it was observed that mistake of counsel in not arguing a provision amounts to an error apparent on the face of record. Similarly, counsel's mistake or oversight leading to non-application

²⁰ *Sanjay Kumar Agarwal v. State Tax Officer*, reported at (2024) 2 SCC 362

²¹ *Radha Bhattad v. Rashmi Cement Limited*, reported at 2023 SCC OnLine Cal 2570

²² *Y. Venkannachowdary & Ors. v. The special Deputy Collector, Land Acquisition (General), Hyderabad District & Ors.*, reported AIR 1981 AP 232

of the Court's mind to a provision of law was held to come within the ambit of the review jurisdiction in *Tinkari Sen (supra)*²³ and *Girdhari Lal Gupta (supra)*²⁴.

121. There is no quarrel with such propositions of law, which are well-settled.

However, in the present *lis*, there being no “mistake” on the part of counsel or any error of law apparent on the face of the record, as discussed above, the foundational premise of exercise of the review jurisdiction is not attracted at all.

122. The grounds taken in the review application have already mostly been discussed and decided on merits while dismissing the recall application.

There is no error apparent on the face of the record in such order, nor is there any discovery of new matter, since all the points argued now were available to the R/A at the relevant juncture, when the order under recall was passed.

123. The recall application was dealt with on merits and the self-same issues, which were conclusively decided then, are being sought to be urged afresh now, merely to protract the litigation indefinitely, much to the detriment of the octogenarian respondent no.5, Sushila. Moreover, the arguments advanced now by the R/A, at best, could have been errors of law amenable to a challenge against the order dismissing the recall application before a superior forum; however, they do not come within the zone of consideration in review.

²³ *Tinkari Sen & Ors. v. Dulal Chandra Das & Ors.*, reported at AIR 1967 Cal 518

²⁴ *Girdhari Lal Gupta v. D.H. Mehta & Anr.*, reported at (1971) 3 SCC 189

124.As such, this court comes to the conclusion that there is no scope of exercise of the review jurisdiction to interfere with the order dismissing the recall application of the R/A dated November 21, 2025.

CONCLUSION

125.In view of the above findings, the Court comes to the conclusion that no case for review of the order dated November 21, 2025 has been made out from any perspective. Rather, it is clear from the nature of the review application that it is a *mala fide* bid to protract the lifespan of the litigation by re-agitating the same issues over and over again in different garbs, to the utter detriment of respondent no.5-Sushila, the contesting respondent, who is an octogenarian lady and being unnecessarily harassed and deprived of the fruits of the order which was assailed in the appeal, even after the appeal itself has been dismissed as withdrawn long back.

126.Apart from not taking any steps for making any transposition application at the relevant juncture despite having knowledge of the withdrawal application, the R/A took out the recall application after a considerable length of time. Turning out unsuccessful in the said forum, the present review application has been made afresh, also after quite a period of time, virtually to reopen the self-same issues. Such attempt on the part of the R/A is definitely vexatious and harassing, entitling the respondent no.5, the principal contesting respondent, to be compensated by costs.

127.Accordingly, RVWO No.2 of 2026 is dismissed on contest with costs of Rs.20,000/- (Rupees Twenty Thousand Only), to be paid by the review

applicant to the principal contesting respondent/respondent no.5, namely Sushila Daga, within June 22, 2026. The Order dated November 21, 2025 passed in ACO No.4 2025 in APO No.240 of 2016 is confirmed.

128.Consequentially, GA No.1 of 2026 is also disposed of.

129.Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)