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IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
Ordinary Original Civil Jurisdiction
IA NO. GA/1/2026
In
RVWO/4/2026
ANDREW YULE AND CO LTD VS SAMARENDRA NATH SHAW AND ANR

Before:

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 24th April 2026**Appearance:**

Mr. Rohit Banerjee, Adv.

Ms. KanchanJaju, Adv.

Mr. S. Kr. Agarwal, Adv.

Ms. Anushka Chatterjee, Adv.

...for the applicant

Mr. Jaydip Kar, Sr. Adv.

Mr. Sourav Kumar Mukherjee, Adv.

Ms. Sahana Pal, Adv.

...for the Respondents

The Court: This application for review is filed by the Appellant Andrew Yule and Co. Ltd. who is a defendant in C.S. 574 of 1985 assailing the order dated December 12, 2025 passed in IA/GA 9 of 2025. C.S. 574 of 1985.

The reason for this review is mainly highlighted in Ground No-V of the Review Application although there are other grounds.

Although several grounds are taken in this review application but at the time of argument, Mr. Bannerjee Learned Advocate for the applicant/defendant has advanced argument that relevant paragraph 49 and 50 in the case of Asma Lateef and Another VS Shabbir Ahmad and others reported in (2024) 4 SCC P. 696 was not considered but para-26 of the said decision was considered and it was the fault of the applicant defendant for not drawing attention to paragraph 49 and 50 of the decision of the Hon'ble Supreme Court in the case of Asma Lateef (supra).

Learned Advocate further submits that the maintainability of the suit was raised in Court and it was the contention of the defendant that the suit is not

maintainable and the issue of maintainability should be decided first.

Learned Advocate also submits that though on the ground of exigency the application of the plaintiff was allowed prior to deciding the issue of maintainability but nowhere the plaintiff pleaded exigency.

Learned Advocate relies upon the following Judicial decisions:

Asma Laleef and Another VS Shabbir Ahmad and others.

Reported in (2024) 4 SCC-696.

Shivaji Balaram Haibatti VS Avinash Maruthi Power

Reported in (2018) 11 SCC-652.

Mr. Kar Learned Senior Advocate for the plaintiff/opposite party submits that this application for review is not maintainable in the eye of Law. He further submits that the issue of extra ordinary situation or exigency which is a ground for passing appropriate orders as observed in the case of Asma Lateef and Another (supra) was considered and dealt with by this Court by giving reasons in the said order and thereafter direction for payment of certain amount of occupation charge was made. Thus there is no scope to reconsider such issue. Mr. Kar also submits that this review application is liable to be dismissed.

The following Judicial decisions are relied upon by Learned Senior Advocate:

Shri Ram Sahu (Dead) VS Vinod Kumar Rowat and others.

Reported in (2021) 13 SCC. P-1.

Lily Thomas and others VS Union of India and others.

Reported in (2000) 6 SCC-P 224.

Before proceeding to decide the material in issue it is necessary to consider the provision of review as provided under Order XLVII Rule 1 of the Code of Civil Procedure. Order XLVII Rule-1 of Code of Civil Procedure Provides as follows:

‘Application for review of judgment.-(1) Any person considering himself aggrieved-

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

(b) *By a decree or order from which no appeal is allowed or*

(c) *By a decision on a reference from a Court of Small Causes,*

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

A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

¹[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.]'

Thus the application for Review can be filed on the grounds as provided under Order XLVIII, and no others.

At the outset it appears that in the application for review the applicant/defendant could not point out any error on the face of the record.

Secondly the observations made in certain paragraphs of the decision of Atma Lateef (supra) may not be quoted but the decision was considered and reasons are assigned in the order itself for coming to conclusion. Thirdly the plea taken by the

applicant that exigency was not pleaded in the petition for grant of the relief prior to deciding maintainability also cannot be sustained. The plaintiff has clearly stated in his application about exigency. The relevant paragraph is quoted hereinbelow:

‘That this Debutter Estate of Shree Shree Jagat Janani Thakurani is a fairly large Estate. The Deity has not own abode and there is substantial expenditure which is required to be incurred month by month and every month for maintenance of the establishment of the said Estate where number of employees are permanently working. At present there are around 250 sebaits. The Joint Receivers are disbursing necessary amount for performing Nitya Seba Puja. Besides Nitya Seba Puja various periodical ceremonial pujas are performed. The main puja of the said deity, being basanti Puja is annualally performed with great pomp and grandeur. Besides all the outgoings including Income Tax Wealth Tax Municipal Tax, GST operation and maintenance charges of other building and assets of the Estate are paid by the Joint Receivers out of the rent issues and profits in respect of inter alia of the demised premises.

That such expenditure is principally met from the rent of different immoveable properties of the Estate the most important of which is the said demised premises.

This Hon’ble Court being the guardian of the Deity, the interest of the Deity is required to be protected in all possible manner. The present state of affairs if allowed to continue the Deity and the Deity only will continue to suffer.’

Thus the contentions made in said paragraphs are sufficient for the Court which is the Guardian of the Deity to infer that there is exigency in the matter.

In the event the applicant is aggrieved with the reasons assigned by this Court for arriving at the conclusion the remedy lies in appeal and not in review. Thus this Court does not find any merit in the application for Review and the same should be dismissed.

Thus this application for review RVWO-4/2026 stands dismissed.

(BISWAROOP CHOWDHURY, J)

A.BHAR.