

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**RVWO/18/2026
IA No. GA/1/2026**

**B. N. NOBBIS AND CO AND ORS
-VS-
KAMALES MALLIK AND ORS**

**BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
-AND-
The Hon'ble JUSTICE MD. SHABBAR RASHIDI**

For the Petitioner	:	Mr. Mainak Bose, Sr. Adv. Mr. Shuvasish Sengupta, Adv. Mr. Anurag Bagaria, Adv. Ms. Pallavi Sengupta, Adv.
For the Respondent no.1	:	Mr. Kushal Chatterjee, Adv. Mr. Arindam Paul, Adv. Ms. Debarati Das, Adv.
For the Respondent no.2	:	Mr. D. N. Sharma, Sr. Adv. Mr. Altamas Alim, Adv. Mr. S. R. Saha, Adv.
For the Respondent nos.3, 4, 5 & 9	:	Ms. Ishita Chakraborty, Adv.
For the Respondent no.7	:	Mr. A. P. Gomes, Adv.
For the Respondent no.11	:	Mr. Subhendu Bandopadhyay, Adv. Mr. Saikat Pal, Adv.
HEARD ON	:	30.06.2026
DELIVERED ON	:	30.06.2026

DEBANGSU BASAK, J.:-

1. Review applicant seeks review of the judgment and order dated April 24, 2026 passed in APD/9/2025.

2. In the appeal in which, the judgment under review was passed, we held that, the judgment and order under appeal before us was a nullity due to lack of jurisdiction of the learned Trial Judge in trying and deciding a suit involving a commercial dispute within the meaning of the Commercial Courts Act, 2015. The suit involved a commercial dispute. Despite the coming into effect of the Act of 2015 and the Commercial Division established, the suit was heard in the non-commercial division.
3. Learned Senior Advocate appearing for the review applicant submits that, two days prior to the judgment and order under review, Hon'ble Supreme Court on April 22, 2026, in **Civil Appeal No. Of 2026 [SLP (C) No.8111 of 2026] (Shri Balaji Industrial Engineering Ltd. (formerly known as Balaji Industrial Products Ltd.) -Vs- Steel Authority of India Ltd – IISCO Steel Plant [Formerly known as IISCO Steel Plant])** reversed a decision of the High Court, rendered in APO/65/2024 (Steel Authority of India Limited –Vs- Shri Balaji Industrial Products Limited). He submits that, the decision dated February 2, 2026 of the High Court was considered by the Judgment and order under review.
4. Learned Senior Advocate appearing for the review applicant relies upon **(2016) 3 Cal LT 38 (Nihar Ranjan Biswas –Vs- The State of West Bengal), AIR 1967 Cal 518 (Tinkari Sen and Others – Vs- Dulal Chandra Das and Others), (2003) 10 Supreme Court Cases 228 (Amarjit Kaur –Vs- Harbhajan Singh and Another) and (2005) 4 Supreme Court Case 741 (Board of Control For**

Cricket in India and another -Vs- Netaji Cricket Club and others) in support of the contention that, the present review is maintainable. He contends that, the decision of **Shri Balaji Industrial Engineering Ltd. (Supra)** rendered by the Supreme Court on April 22, 2026 is a binding precedent. The same, however, could not be drawn to the attention of the Court on the date when, the judgment and order under review was passed since, the learned counsel for the review applicant was unaware of such decision. He submits that, a binding precedent not noticed by a Court, is a good ground for review when attention of the Court is drawn to such binding precedent.

5. Learned advocate for the respondent submits that, the discovery of a subsequent binding authority is no ground for review. He relies upon **(2024) 7 Supreme Court Cases 315 (Government Of NCT of Delhi, Through its Secretary, Land and Building Department and Anr -Vs- K. L. Rathi Steels Limited and Others)**. He submits that the view expressed in **Shri Balaji Industrial Engineering Ltd. (supra)** was contrary to **(1982) 1 Supreme Court Cases 552 (State of Madhya Pradesh -Vs- Dewadas and Others)**.
6. Referring to **Shri Balaji Industrial Engineering Ltd. (Supra)** rendered by the Supreme Court on April 22, 2026, learned advocate appearing for the respondent submits that, the same cannot be said to be a settled law requiring the High Court to take notice of the same as a ground for review and allow the review

proceeding. He submits that, the ratio laid down in **Shri Balaji Industrial Engineering Ltd. (Supra)**, is contrary to the ratio of an earlier decision of the Supreme Court, rendered in **Dewadas and Others (Supra)** and therefore cannot be treated as a settled view.

7. Respondent no.1 filed a suit for recovery of possession and *mesne profit* being CS/244/2008. In such suit, a decree dated January 9, 2024 was passed. Being aggrieved by such judgment and decree dated January 9, 2024 passed in CS/244/2008, the respondent no.1 preferred an appeal therefrom. Such appeal was disposed of by the judgment and order under review. As noted above, we disposed of the appeal of the respondent no.1 holding that, the decree dated January 9, 2024 was a nullity.
8. In the judgment and order under review, we held that the, suit involved a commercial dispute within the meaning of the Commercial Courts Act, 2015. We held that, the learned Trial Judge who passed the decree dated January 9, 2024 was not with the requisite determination/roster governing Commercial Division of the High Court. Consequently, judgment and decree dated January 9, 2024 was held to be a nullity.
9. While holding that the judgment and decree dated January 9, 2024 to be a nullity, we took note of various provisions of the Act of 2015 as also the practice directions. We also took note of our decision rendered in at least two of the appeals on similar point.
10. One of our decisions on the issue of lack of jurisdiction/roster rendered in **Steel Authority of India Limited Vs Shri Balaji**

Industrial Engineering Ltd. on February 2, 2026 was carried in appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court in **Shri Balaji Industrial Engineering Ltd. (Supra)**, held that, the Division Bench was not justified in setting aside the decision of the learned Single Judge solely on the ground of lack of jurisdiction without examining the merits of the case.

11. The decision of the Hon'ble Supreme Court rendered in **Shri Balaji Industrial Engineering Ltd. (Supra)** is binding on us. The same was rendered on April 22, 2026 while the judgment and order under review is dated April 24, 2026.
12. On April 24, 2026, when, we passed the judgment and order under review, our attention was not drawn to **Shri Balaji Industrial Engineering Ltd. (Supra)** by either of the parties. Justification for our attention not being drawn to the binding precedent of **Shri Balaji Industrial Engineering Ltd. (Supra)** canvassed on behalf of the review applicant is that the learned counsel for the review applicant was not aware of the same on April 24, 2026.
13. In **Nihar Ranjan Biswas (Supra)**, one of us sitting singly allowed a review on the ground that, the binding precedent was not brought to the notice of the Court. In doing so, reliance was placed on a Co-ordinate Bench decision reported in **AIR 1967 Cal 518 (Tinkari Sen and Others -Vs- Dulal Chandra Das and Others)** and **(2003) 10 Supreme Court Cases 228 (Amarjit Kaur -Vs- Harbhajan Singh and Another)**.

14. The Co-ordinate Bench in **Tinkari Sen and Others (supra)** held that overlooking a proposition of law well-settled and beyond controversy furnished a good ground for review as it is an error apparent on the face of the record.
15. **Amarjit Kaur (supra)** held that, rejecting a review application summarily despite a judgment of the Supreme Court being brought to the notice of the review Court without expressing any view on the matter was a sufficient ground of setting aside an order made on the review petition.
16. Essentially, the two authorities noted above, are of the view that, non-consideration of binding precedent is a good ground for review.
17. In **Board of Control for Cricket in India (supra)**, the Supreme Court while dealing with the powers of review held that, as follows:

89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

18. On the issue of maintainability of the appeal, **K. L. Rathi Steels Limited and Others (supra)** held that, a decision of a higher forum rendered subsequent to the order under review is no ground for grant of review. In the facts of the present case, the binding precedent which the review applicant seeks to rely upon was passed prior to the judgment and order under review.
19. The contention that, the ratio laid down in **Shri Balaji Industrial Engineering Ltd. (Supra)** need not be followed in view of the dictum of **Dewadas and Others (supra)** should not be entered into by us. We find that **Shri Balaji Industrial Engineering Ltd. (Supra)** is a binding precedent on us and was delivered prior to the judgment and order under review.
20. In such circumstances, we allow the prayer for review.
21. Since our decision on lack of jurisdiction rendered in the judgment and order under review is incorrect, in view of **Shri Balaji Industrial Engineering Ltd. (Supra)** the finding that, the judgment and decree dated January 9, 2024 is a nullity is recalled.
22. In terms of the ratio laid down in **Shri Balaji Industrial Engineering Ltd. (Supra)**, the appeal is required to be heard on merits.
23. We held in the judgment and order under review, particularly in paragraph 8 thereof, that the suit was for recovery of possession and the suit property was being utilized for commercial exploitation by running an office therefrom.

- 24.** In our view, the subject matter of the suit involves a commercial dispute within the meaning of Section 2(i)(c)(vii) of the Act of 2015. At the time of institution of the suit, the suit property was being used for commercial exploitation by the tenants therein.
- 25.** In such circumstances, the direction contained in paragraph 17 of the judgment and order under review is modified. The appeal is transferred to the Commercial Division for hearing on merits.
- 26.** The Registry is directed to transfer the appeal being APD/9/2025 from the Non-commercial Division to the Commercial Division and renumber the same appropriately. Immediately on transferring and renumbering of APD/9/2025, the Registry will treat APD/9/2025 as disposed of in the Non-commercial Division.
- 27.** List the appeal in the Commercial Division four weeks hence.
- 28.** The Registry will treat the paper book filed in APD/9/2025 as the paper book in the Commercial Division.

(DEBANGSU BASAK, J.)

- 29.** I agree.

(MD. SHABBAR RASHIDI, J.)