

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Sugato Majumdar

RVWO/20/2025
IA NO: GA-COM/1/2025

SHINNING VYAPAR PRIVATE LIMITED
VS
MIHIJAM VANASPATI LTD AND ORS

For the Plaintiff : Mr. Rishad Medora, Adv.
Mr. Rohit Banerjee, Adv.
Ms. Kanchan Jaju, Adv.
Ms. S. Das, Adv.

For the Defendants : Mr. Satadeep Bhattacharyya, Adv.
Mr. Bipin Ghosh, Adv.
Ms. Sriparna Mitra, Adv.

Hearing concluded on : 02/02/2026

Judgment on : 09/02/2026

Sugato Majumdar, J.:

This is an application for review of the judgment and decree passed by this Court on 7th July, 2025, praying for drawing up of a decree, reviewing, modifying and allowing the counter-claim of the judgment and decree dated 7th July, 2025 in terms of the calculation as proposed by the Petitioner/Defendant No. 1 contained in Annexure-D along with other prayers.

The Principal plea is that the general rule of appropriation of payments says that in the absence of any agreement, adjustment of payments received by a creditor

from the debtor must be made, firstly, in payment of interest and thereafter, in payment of the principal amount. Significance of this issue regarding the rule of appropriation is that the Petitioner/Defendant No. 1 had received a sum of Rs.10,00,000/- which had been deposited before the Registrar, High Court at Calcutta. The said amount of Rs.10,00,000/- had to be appropriated first to the interest accrued till the date of receiving of the said Rs.10,00,000/- by the Petitioner/Defendant No. 1 and after that the remaining amount shall be appropriated towards repayment of balance principal amount. It is contended that the calculation made by this Court in terms of the aforesaid judgment is erroneous and the same is a result of overlooking the submission made by the Learned Counsels. Accordingly, the instant Petition has been filed, praying for reviewing and/ or modification of the judgment in accordance with Annexure-D.

The Plaintiff filed affidavit-in-opposition denying all the material allegations. It is the plea of the Plaintiff/ Judgment Debtor that the judgment and decree should not be reviewed; the word “sufficient reason” as appears in Order XLVII Rule 1 of the Code of Civil Procedure, 1908 are not wide enough to include the proposed modification. According to the Plaintiff/Judgment Debtor, the application should be dismissed.

Affidavit-in-Reply confirms the same stand as in the Petition.

Mr. Medora, the Learned Counsel appearing for the Petitioner argued that the general principal of law is that repaid amount, part or full, shall be first appropriated to the interest then to the outstanding principal amount. This was overlooked in the judgment dated 07/07/2025, as submitted. According to Mr. Medora, this is an erroneous calculation which can be rectified and which warrants filing of review application. Mr. Medora relies upon two Judges Bench decisions in **Industrial**

Credit & Development Syndicate now called I.C.D.S. Ltd. Vs. Smithaben H. Patel (Smt.) & Ors. [(1999) 3 SCC 80] and **V. Kala Bharathi & Ors. Vs. Oriental Insurance Company Ltd., Branch Chitoor [(2014) 5 SCC 577]** to substantiate his contentions on rule of appropriations.

Mr. Bhattacharya, Learned Counsel for the Plaintiff/Judgment Debtor argued that in the guise of review application the Petitioner/Defendant No. 1 has sought for reopening of a decided suit; and in the guise of modification, what is sought for is reopening of a delivered judgment. He further argued that while passing the judgment this court considered the observation of the Supreme Court of India in **Civil Appeal No. 8258 of 2013 [2013 (10) SCC 543]** which is the foundation of the judgment passed by this court. According to Mr. Bhattacharya, the review Petition is not maintainable. Mr. Bhattacharya further submitted that in the guise of review the same Court cannot be invited to function as a court of appeal of itself. Mr. Bhattacharya relied upon three Judges Bench decisions in **S. Madhusudhan Reddy Vs. V. Narayana Reddy & Ors. [(2022) 17 SCC 255]**, **Industrial Credit & Development Syndicate now called I.C.D.S. Ltd. Vs. Smithaben H. Patel (Smt.) & Ors. [(1999) 3 SCC 80]** and **V. Kala Bharathi & Ors. Vs. Oriental Insurance Company Ltd., Branch Chitoor [(2014) 5 SCC 577]**.

I have heard rival submissions.

The Plaintiff/Judgment Debtor pleaded that once the cheque of Rs. 15 lakh was dishonored, he paid Rs.2,00,000/- to the Petitioner/Defendant No. 1, reducing the principal amount to Rs.1,00,000/-. The Defendant No. 1 argued that these two lakh had been appropriated to the accrued interest. The claim of the Defendant No. 1 and the modification sought as contained in the Annexure-D is as follow:

a) Principal Amount	15,00,000.00
b) Less: Amt. Recd. on 08/02/2012 if A/c principal repayment	2,00,000.00
	13,00,000.00
c) Add: Interest @ 24% from 21/01/2012 to 07/02/2012 on Rs.15,00,000/-	17,754.00
	13,17,754.00
d) Add: Interest @ 24% from 08/02/2012 to 7 th Oct. 2013 on Rs.13,00,000/-	5,20,000.00
Total	18,37,754.00
e) Less: Received from Calcutta High Court on 08/10/2013	10,00,000.00
f) Principal Amount Due as on 08/10/2013	8,37,754.00
g) Add: Interest @ 24% from 08/10/2013 to 07/07/2025 on Rs.8,37,754/- for 11 years 9 months	23,62,467.00
h) Total Principal & Interest Dues as on 07/07/2025 as per claim made in Review Application.	32,00,221.00
Cost of litigation of Rs.14,00,000/- claimed as per Cost Budget Sheet at page no. 56 of Notes on argument filed on 01/05/2025 and as per the undertaking given by the Plaintiff No. 2 in accordance with the order dated 27/02/2017 passed by the Hon'ble Justice Soumen Sen but allowed only to the extent of RS.	14,00,000.00

In the order dated 13th September, 2013 passed in Civil Appeal No. 8258 of 2013, the Supreme Court of India noted that it was agreed between the parties and accordingly directed that before filing of winding up petition a sum of Rs.2,00,000/- had been paid by the Plaintiff/Judgment Debtor, a sum of Rs.13,00,000/- was due and payable; and further that it was agreed between the parties that out of Rs.13,00,000/- deposited with the Calcutta High Court, the Respondent therein shall withdraw a sum of Rs.10,00,000/- and Rs.3,00,000/- should be returned to the Appellant. It is pertinent to mention that M/s. Bhasha Construction and Industrial Projects Pvt. Ltd. was the Appellant and M/s. Shinning Vyapar Pvt. Ltd., being the preset Applicant, was the Respondent therein. The Judgment of the Supreme Court of India was passed on 13/09/2013, almost one year after presentation of the plaint which was on 04/10/2012. Considering the order passed by the Supreme Court of India, as aforesaid, this Court observed that Rs.2 lakh was not directed to be adjusted against an outstanding sum composed of the original principal amount as well as capitalized interest. There is nothing to show that parties agreed to capitalize the interest. After recording the agreement between the parties at a date subsequent to filing of the suit the Supreme Court of India noted that the outstanding amount was Rs.13 lakh as on that date. This Court passed the judgment on that basis.

The Petitioner/Defendant No. 1 prayed for modification of the order in terms of Annexure-D. Claim contained in the said sheet shows the outstanding amount, as claimed by the Petitioner/Defendant No. 1, as on 07/10/2013 was Rs.18,37,754/-. This is contrary to the agreement noted by the Supreme Court of India and direction given therein.

Order XLVII Rule 1 of the Code of Civil Procedure, 1908 states as follow:

“1. 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.”

From time to time, the scope of Order XLVII Rule 1 of the Code of Civil Procedure, 1908 have been considered and elucidated by the Supreme Court of India. In **S. Nagaraj Vs. State of Karnataka [1993 Supp (4) SCC 595]** the three Judges Bench of the Supreme Court of India considered the expression “for any other sufficient reason” and held that the expression has an expanded meaning; a decree or order passed under misapprehension of the state of circumstances is a sufficient ground to exercise the power under Order XLVII Rule 1 of the Code of Civil Procedure, 1908. In **Parsion Devi Vs. Sumitri Devi [(1007) 8 SCC 715]** it was considered and observed by the Supreme Court of India that under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 a judgment may be opened to review *inter alia* if there is a mistake or an error apparent on the face of the record. 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 the record justifying the Court to exercise his power of review under Order XLVII Rule 1 of the Code of Civil Procedure, 1908. Similarly, this exercise of this power is not permissible for an

erroneous decision to be reheard and corrected. In **S. Madhusudhan Reddy Vs. V. Narayana Reddy & Ors. [(2022) 17 SCC 255]** referred to by Mr. Bhattacharya, reiterated the principal. The Supreme Court of India referred to **Jain Studios Ltd. Vs. Shin Satellite Public Co. Ltd. [(2006) 5 SCC 501]** wherein it was held that power of review cannot be confused with appellate power which enables a superior court to correct errors. It is not rehearing of an original matter. A repetition of old and over-ruled argument is not enough to reopen, concluded adjudication.

Coming to the case in hand, what the Petitioner invites this Court to reopen a decided case; to recast and modify the delivered judgment on the basis of the same arguments which had been considered and decided. The pleading is rife with contention that the old notes of arguments should be considered, inviting this court to modify the judgment, in fact, the Petitioner urges this court to change the foundational base of the aforesaid judgment dated 07/07/2025, giving a go-by to the Order of the Supreme Court of India dated 13/09/2013. This is not a plea for correction of calculation error. It is rather an attempt of usurping the whole foundation of the judgment with reason and arguments which had already been heard and decided. Rather the Petitioner invites this Court to be its own appellate forum. For reasons stated above, this Court is of opinion that the instant review application is not tenable and is hereby dismissed without any cost.

(Sugato Majumdar, J.)