
(2021) 05 J&K CK 0053
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 14 Of 2018

Dr Nazir Ahmad Dhar

APPELLANT

Vs

Musthaq Ahmad Dhar And Others

RESPONDENT

Date of Decision : 28-05-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Section 114, Order 47 Rule 1

Citation : (2021) 05 J&K CK 0053

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : S.N.Ratanpuri, Ashiq Hussain, Sahil Verma

Final Decision : Dismissed

Judgement

1. Review of judgement dated 16th October 2018, passed in the Appeal, bearing CFA no.19/2016, titled Dr. Nazir Ahmad Dhar vs. Musthaq Ahmad

Dhar and others, is sought for in petition on hand.

2. Heard and considered.

3. Review petitioner, aggrieved of judgement and decree dated 27th November 2015, passed by 2nd Additional District Judge, Srinagar (hereinafter

referred to as "Trial Court") in a Civil Suit, titled Dr. Nazir Ahmad Dhar vs. Mushtaq Ahmad Dhar and others, had filed an appeal, which was

diarized and registered as CFA no.19/2016. This Court by the judgement, under review, upheld the Trial Court judgement and decree and dismissed

the Appeal of review petitioner.

4. Review of judgment dated 16th October 2018 is prayed for on the ground that there is an error apparent on the face of record in respect of the

conclusions drawn by this Court at paragraph 15 of the judgement. It is

contended that once evidence is admissible and relevant, the evaluation of evidence so produced is not entirely a matter of discretion with the court inasmuch as evidence was required to be appreciated by the 1st Appellate Court. The appeal is stated to be in continuation to the proceedings. The Court is said to have contravened the provisions of Code of Civil Procedure and ignored the evidence. It is also contended that in paragraph 17, the Court has dealt with question of transferring the moneys from foreign country to India without having channeled it through the banks and that in civil proceedings the court was required to be concerned with the fact of transfer and not its methodology, more so the Court has ignored the evidence establishing the fact that defendants had received the money from appellant/petitioner. To observe that money had not been routed through banks, is of no consequence so long as it is established that the moneys sent by appellant/petitioner had actually been received by defendants, which fact was acknowledged by them in their communications and that the Court has not seen and examined the record and ignored important evidence. It is also averred that in paragraph 18 of the judgement under review, the Court has again dealt with the issue of admissibility of evidence and the conclusion drawn by the Court is in ignorance of material existing on record inasmuch as the primary evidence was admissible in evidence had it been available and since the primary evidence was not available, therefore, the Court had allowed appellant/petitioner to produce secondary evidence. The Court has not identified as to which document was inadmissible.

5. It is pertinent to mention here that while considering abovementioned contentions made in the review petition, the scope and ambit of Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure is to be taken into consideration.

6. The grounds on which review can be sought are enumerated in Order XLVII Rule 1 CPC, which reads as under:

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 of the court which passed the decree or made the order.â??

7. An application for review would lie, among others, when an order suffers from an error apparent on the face of record and permitting the same to continue would lead to failure of justice. Limitations on exercise of power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.

8. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake.

9. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

10. Given contentions of learned counsel for review petitioner, it would be apt to mention here that the Court while rendering the judgement under view, has comprehensively discussed all facets of the matter including the evidence adduced by parties before the Trial Court; by virtue of which, it was found that plaintiff could not prove his case. So was the position before the Court when the Appeal was dismissed.

11. Insofar as submissions made by learned counsel for review petitioner and averments made in review petition are concerned, those are not the grounds that would portray or depict or show error apparent on the face of

record but motion in hand is an Appeal under the guise of review petition.

12. The Supreme Court in Haridas Das vs. Usha Rani Banik (Smt.) and Others, (2006) 4 SCC 78, while considering the scope and ambit of Section

114 CPC read with Order 47 Rule 1 CPC observed and held as under:

â??14. In Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170 it was held that:

â??8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47

Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the

High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in Aribam Tuleshwar Sharma v. Aribam Pishak

Sharma, (1979) 4 SCC 389 speaking through Chinnappa Reddy, J. has made the following pertinent observations:

'It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every

court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to

the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after

the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the

order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any

analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of

appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed

by the subordinate court.'

15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters

or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not

be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the

face of the record or any other sufficient reason.â??

13. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be

said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be

established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of

the superior court to issue such a writ. An error that is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an

error apparent on the face of record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of jurisdiction under

Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be â??reheard and correctedâ??. A review petition, it must be remembered,

has a limited purpose and cannot be allowed to be â??an appeal in disguiseâ??. [Vide: Aribam Tuleswar Sharma v. Aribam Pishak Sharma, AIR

1979 SC 1047; Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137, and Parsion Devi v. Sumitri Devi, (1997)

8 SCC 715].

14. Again, the Supreme Court in Lily Thomas vs. Union of India, (2000) 6 SC 224, held that power of review could be exercised to correct a mistake

but not to substitute a view. Such powers could be exercised within limits of statute dealing with exercise of power. It was further observed that the

words â??any other sufficient reasonâ? appearing in Order 47 Rule 1 CPC must mean â??a reason sufficient on grounds at least analogous to those

specified in the ruleâ? as was held in Chhajju Ram vs. Neki, AIR 1922 PC 112 and Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse

Athanasius, AIR 1954 SC 526.

15. Section 114, CPC, provides for a substantive power of review by a civil court and consequently by appellate courts. Section 114 envisions:

â??114. Review. â?"Subject as aforesaid, any person considering himself aggrieved, â?

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code,

(c) by a decision on a reference from a Court of Small cause, may apply for a

review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.â??

16. The words â??subject as aforesaidâ? occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 Rule 1, CPC

17. Power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. It cannot be denied that the review is the creation of a statute. In the case of Patel Narshi Thakershi vs. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844, the Supreme Court has held that power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case.

When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated. The term â??mistake or error apparentâ? by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of facts or legal position. If an error is not obvious and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court on a point of fact or law. In any case, while exercising the power of review, the court concerned cannot sit in appeal over its judgment/decision. [See: Inderchand Jain

vs. Motilal, (2009) 14 SCC 663; T.C. Basappa vs. T.Nagappa, AIR 1954 SC 440; Hari Vishnu Kamath vs. Ahmad Ishaque, AIR 1955 SC 233;

Thungabhadra Industries Ltd. v. Govt. of A.P., AIR 1964 SC 1372; Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170; State of West

Bengal and Others vs. Kamal Sengupta and Anr., (2008) 8 SCC 612; Rajah Kotagiri Venkata Subbamma Rao v. Rajah Vellanki Venkatrama Rao

(18991900) 27 IA 197; Hari Sankar Pal v. Anath Nath Mitter, 1949 FCR 36; K. Ajit Babu v. Union of India, (1997) 6 SCC 473; Ajit Kumar Rath v.

State of Orissa, (1999) 9 SCC 596 and Gopal Singh v. State Cadre Forest Officers' Assn., (2007) 9 SCC 369].

18. The Supreme Court in Ram Sahu (Dead) through LRs and others v. Vinod Kumar Rawat and others, 2020 SCC OnLine SC 896, after discussing

slew of judgements on the subject of review, has held that an application for review is more restricted than that of an appeal and the Court of review

has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent

power nor can an appellate power be exercised in the guise of power of review. After holding this, the Supreme court found that High Court

overstepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC.

19. In the backdrop of above well-settled legal position, all that has been argued by learned counsel for review petitioner is that this Court should re-

open the findings recorded in the judgement under review. It is made clear here that review jurisdiction cannot be used for that purpose. This is not the

scope of Section 114 read with Order 47 Rule 1 CPC. After having an overall view of the grounds taken in the application and submissions made by

learned counsel for review petitioner, there is no error apparent on the face of the record warranting review of judgement dated 16th October 2018.

The review petition is wholly misplaced and liable to be dismissed.

20. For the reasons discussed above, review petition is dismissed.