

(2015) 03 AHC CK 0122

In the Allahabad High Court

Case No : Civil Misc. Review Application No. 95143 of 2011 in Civil Misc. Writ
Petition No. 21621 of 2006

Ishwar Dayal and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2015) 4 ADJ 401 : (2015) 5 ALJ 487 : (2015) 110 ALR 679 : (2015)
3 AWC 2618

Hon'ble Judges : Krishna Murari, J; Pramod Kumar Srivastava, J

Bench : Division Bench

Advocate : Shiv Sagar Singh, for the Appellant

Final Decision : Dismissed

Judgement

Pramod Kumar Srivastava, J.—Counsel for applicant-petitioner Sri Shiv Sagar Singh present. None appears on behalf of opposite party-respondent. This is an application seeking review of the judgment and order dated 3.3.2011 disposing of the writ petition filed by the petitioner and with following order:

"Additional District Magistrate (Land Acquisition), Gautam Buddh Nagar, who is present in person before this Court, is directed to release the compensation amount to the petitioner within a period of fifteen days from the date of communication. The compensation amount shall be paid as per the provisions of the Land Acquisition Act

With the aforesaid direction, this writ petition is finally disposed of."

2. The judgment was passed after hearing the then learned counsel for the petitioner-applicant Sri Pankaj Mithal. The review application has been filed through Sri Shiv Sagar Singh who had neither filed the writ petition nor had argued nor there is any reflection either from the review application or from the record of the case that he was present at the time of arguments. The question of

propriety of filing a review petition and arguments by a new counsel who did not appear in the earlier proceedings, has been considered by the Hon'ble Apex Court in the case of Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another, AIR 1997 SC 1005 : (1997) 1 Crimes 182 : (1997) 1 JT 486 : (1997) 1 SCALE 286 : (1997) 9 SCC 736 : (1996) 10 SCR 915 Supp , wherein it was observed as under:

The record of the appeal indicates that Sri Sudarsh Menon was the advocate on record when the appeal was heard and decided on merits. The review petition has been filed by Sri Prabir Choudhary who was neither an arguing counsel when the appeal was heard nor he was present at the time of argument. It is unknown on what basis he has written the grounds in the review petition, as if, it is a rehearing of an appeal against our order. He did not confine to the scope of review it would not be in the interest or profession to permit such practice."

3. Same is the position in this case. Sri Shiv Sagar Singh under whose signature review application has been filed, had neither argued the writ petition on behalf of the petitioner-applicant nor there is any indication that he was present at the time of hearing.

"Order-XLVII, Rule-1, CPC deals with review, which reads that application for review of judgment can be made by a person "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".

4. In present case there is no new or important fact which was not within the knowledge of petitioner-applicant at the time of hearing of original writ petition. The relevant portion of above mentioned provision is "some mistake or error apparent on the face of the record". In present case this Court had considered rights of plaintiff-petitioner and thereafter decided the writ petition through impugned order by which relief "d" of writ petition for payment of compensation of land in question was granted to applicant-petitioner. There appears no discovery of new and important matter or evidence, and also there appears no mistake or error apparent on the face of the record in impugned order. In light of above mentioned we are of the opinion that there appears no error on the face of record in impugned order, that may require exercise of review jurisdiction. The point mentioned by learned counsel for petitioner-applicant were considered and then judgment in question was passed. In any case the judgment and order dated 3.3.2011 was passed on merits, and deliberately without any inadvertence or error. There is no error apparent on face of record. Review of such order/judgment is not maintainable. So present review application is liable to be dismissed. Further review is being sought on the ground that the counsel, who had appeared and argued the writ petition, while advancing the argument failed to draw the attention of the Court on certain points and therefore, the judgment is erroneous. Failure on the part of the counsel of a litigant to either plead or to

argue a ground cannot constitute good ground for review. Review has to be strictly confined within four corners of Order XLVII Rule 1 of the Code of Civil Procedure and is not permissible on new ground which has not been raised or argued. As a matter of fact, in the garb of review, the petitioner-applicant wants de novo rehearing which is impermissible. Thus on merit also, the review application has no force. For the aforesaid reasons, the review application stands dismissed.