

(2017) 03 SHI CK 0111
In the High Court Of Himachal Pradesh
Case No : 45 of 2015

Kameshwar Sharma and others

APPELLANT

Vs

State of H.P. and others

RESPONDENT

Date of Decision : 28-03-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 114](#)/
[Order 47 Rule 1](#) - Review

Citation : (2017) 03 SHI CK 0111

Hon'ble Judges : Mansoor Ahmad Mir, Tarlok Singh Chauhan

Bench : Division Bench

Advocate : Sanjeev Bhushan, Rajesh Kumar, Shrawan Dogra, Anup Rattan, Romesh Verma, J.K. Verma, Narender Thakur, Pranay Pratap Singh

Judgement

1. By the medium of this review petition, the review petitioners have invoked the jurisdiction of this Court in terms of the mandate of Order 47 Rule 1 of the Code of Civil Procedure (for short "CPC") seeking review of judgment and order, dated 23rd March, 2015, made by this Court in CWP No. 1282 of 2012, titled as Kameshwar Sharma & others versus State of Himachal Pradesh & others, whereby the writ petition filed by the petitioners came to be dismissed.

2. The respondents have filed objections and resisted the review petition on the grounds taken therein.

3. Learned Senior Counsel appearing on behalf of the petitioners was asked to show as to what was the mistake or error apparent on the face of the record. He argued that this Court has committed an illegality while making the judgment under review as the petitioners had not prayed for shifting of the headquarter of Gram Panchayat, Dadoghi.

4. Heard.

5. It is beaten law of the land that the power of review has to be exercised sparingly and as per the mandate of Section 114 read with Order 47 Rule 1 CPC.

6. A reference may be made to Section 114 CPC and Order 47 Rule 1 CPC herein: "114. Review. Subject as aforesaid, any person considering himself aggrieved,- (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 Court, or

(c) by a decision on a reference from a Court of Small Causes, 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."

"ORDER XLVII REVIEW

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. (2) A party who is not appealing from a decree on 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.

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."

7. One of us (Mansoor Ahmad Mir, Chief Justice) as a Judge of the Jammu and Kashmir High Court, while sitting in Division Bench, authored a judgment in case titled as Muzamil Afzal Reshi versus State of J&K & Ors., Review (LPA) No.16/2009, decided on 29th March, 2013, in which it was laid down that power of review is to be exercised in limited circumstances and, that too, as per the mandate of Section 114 read with Order 47 CPC. It was further held that the review petition can be entertained only on the ground of error apparent on the face of the record. The error apparent on the face of record must be such which can be unveiled on mere looking at the record, without entering into the long drawn process of reasoning.

8. A Division Bench of this Court has also laid down the similar principle in Review Petition No. 4084 of 2013, titled as M/s Harvel Agua India Private Limited versus State of H.P. & Ors., decided on 9th July, 2014, and observed that for review of a judgment, error must be apparent on the face of the record; not which has to be explored and that it should not amount to rehearing of the case. It is apt to reproduce paragraph 11 of the judgment herein: "11. The error contemplated under the rule is that the same should not require any longdrawn process of reasoning. The wrong decision can be subject to appeal to a higher form but a review is not permissible on the ground that court proceeded on wrong proposition of law. It is not permissible for erroneous decision to be "reheard and corrected."

There is clear distinction between an erroneous decision and an error apparent on the face of the record. While the former can be corrected only by a higher form, the latter can be corrected by exercise of review jurisdiction. A review of judgement is not maintainable if the only ground for review is that point is not dealt in correct perspective so long the point has been dealt with and answered. A review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition of old and overruled arguments cannot create a ground for review. The present stage is not a virgin ground but review of an earlier order, which has the normal feature of finality."

9. The Apex Court in case titled as Inderchand Jain (deceased by L.Rs.) versus Motilal (deceased by L.Rs.), reported in 2009 AIR SCW 5364, has observed that the Court, in a review petition, does not sit in appeal over its own order and rehearing of the matter is impermissible in law. It is profitable to reproduce paragraph 10 of the judgment herein: "10. 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. Review is not appeal in disguise. In Lily Thomas v. Union of India [AIR 2000 SC 1650], this Court held:

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise.""

10. The Apex Court in case titled as Haryana State Industrial Development Corporation Ltd. versus Mawasi & Ors. Etc. Etc., reported in 2012 AIR SCW 4222, has discussed the law on the subject right from beginning till the pronouncement of the judgment and laid down the principles how the power of review can be exercised. It is apt to reproduce paragraphs 9 to 18 of the said judgment hereunder:

"9. At this stage it will be apposite to observe that the power of review is a creature of the statute and no Court or quasijudicial body or administrative authority can review its judgment or order or decision unless it is legally empowered to do so. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Rules framed by this Court under that Article lay down that in civil cases, review lies on any of the grounds specified in Order 47 Rule 1 of the Code of Civil Procedure, 1908 which reads as under:

"Order 47, Rule 1:

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. (2) 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 of which he applies for the review. ExplanationThe 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."

10. The aforesaid provisions have been interpreted in several cases. We shall notice some of them. In *S. Nagaraj v. State of Karnataka* 1993 Supp (4) SCC 595, this Court referred to the judgments in *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* AIR 1941 FC 1 and *Rajunder Narain Rae v. Bijai Govind Singh* (1836) 1 Moo PC 117 and observed: "Review literally and even judicially means reexamination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available

on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* that an order made by the Court was final and could not be altered: "... nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies." Basis for exercise of the power was stated in the same decision as under: "It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard." Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitutionmakers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, "for any other sufficient reason" in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

11. In *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* AIR 1954 SC 526, the three Judge Bench referred to the provisions of the Travancore Code of Civil Procedure, which was similar to Order 47 Rule 1 CPC and observed: "It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein."

It may allow a review on three specified grounds, namely, (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record, and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule". See *Chhajju Ram v. Neki* AIR 1922 PC 12 (D). This conclusion was reiterated by the Judicial Committee in *Bisheshwar Pratap Sahi v. Parath Nath* AIR 1934 PC 213 (E) and was adopted by on Federal Court in *Hari Shankar Pal v. Anath Nath Mitter* AIR 1949 FC 106 at pp. 110, 111 (F). Learned counsel appearing in support of this appeal recognises the aforesaid limitations and submits that his case comes within the ground of "mistake or error apparent on the face of the record" or some ground analogous thereto."

12. In *Thungabhadra Industries Ltd. v. Govt. of A.P.* (1964) 5 SCR 174, another threeJudge Bench reiterated that the power of review is not analogous to the appellate power and observed (Para 11): "A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out."

13. In *Aribam Tuleswar Sharma v. Aibam Pishak Sharma* (1979) 4 SCC 389, this Court answered in affirmative the question whether the High Court can review an order passed under Article 226 of the Constitution and proceeded to observe (Para 3): "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 powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

14. In *Meera Bhanja v. Nirmala Kumari Choudhury* (1995) 1 SCC 170, the Court considered as to what can be characterised as an error apparent on the fact of the record and observed (Para 8): "..... .it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any longdrawn process of

reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* AIR 1960 SC 137 wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record: "An error which has to be established by a longdrawn 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 selfevident 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."

15. In *Parsion Devi v. Sumitri Devi* (1997) 8 SCC 715, the Court observed: "An error which is not selfevident 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 its power of review under Order 47 Rule 1 CPC..... A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise"."

16. In *Lily Thomas v. Union of India* (2000) 6 SCC 224, R.P. Sethi, J., who concurred with S. Saghir Ahmad, J., summarised the scope of the power of review in the following words (Para 15): "Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised."

17. In *Haridas Das v. Usha Rani Banik* (2006) 4 SCC 78, the Court observed (Para 13): "The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict."

18. In *State of West Bengal v. Kamal Sengupta* (2008) 8 SCC 612, the Court considered the question whether a Tribunal established under the Administrative Tribunals Act, 1985 can review its decision, referred to Section 22(3) of that Act, some of the judicial precedents and observed (Para 14): "At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be

of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier. The term "mistake or error apparent" 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 the facts or the legal position. If an error is not selfevident 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 or Section 22(3)(f) of the Act. 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/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment / decision." 11. The Apex Court in another judgment in the case titled as Akhilesh Yadav versus Vishwanath Chaturvedi & Ors., reported in 2013 AIR SCW 1316, has held that scope of review petition is very limited and submissions made on questions of fact cannot be a ground to review the order. It was further observed that review of an order is permissible only if some mistake or error is apparent on the face of the record, which has to be decided on the facts of each and every case. Further held that an erroneous decision, by itself, does not warrant review of each decision. It is apt to reproduce paragraph 1 of the said judgment hereunder: "Certain questions of fact and law were raised on behalf of the parties when the review petitions were heard. Review petitions are ordinarily restricted to the confines of the principles enunciated in Order 47 of the Code of Civil Procedure, but in this case, we gave counsel for the parties ample opportunity to satisfy us that the judgment and order under review suffered from any error apparent on the face of the record and that permitting the order to stand would occasion a failure of justice or that the judgment suffered from some material irregularity which required correction in review. The scope of a review petition is very limited and the submissions advanced were made mainly on questions of fact. As has been repeatedly indicated by this Court, review of a judgment on account of some mistake or error apparent on the face of the record is permissible, but an error apparent on the face of the record has to be decided on the facts of each case as an erroneous decision by itself does not warrant a review of each decision. In order to appreciate the decision rendered on the several review petitions which were taken up together for consideration, it is necessary to give a background in which the judgment and order under review came to be rendered."

12. The same principle has been laid down by this Court in Review Petition No. 65 of 2015, titled as Union of India & others versus Paras Ram, decided on 25th June, 2015; Review Petition No. 115 of 2015, titled as Surjeet Kumar and others

versus State of H.P. and others, decided on 16th March, 2016; Review Petition No. 20 of 2016, titled as Onkar Singh versus Executive Engineer, HPSEB Ltd. and another, decided on 12th May, 2016; and Review Petition No. 54 of 2015, titled as State of Himachal Pradesh and others versus Sh. Jitender Kumar Mahindroo (since deceased) through LRs, decided on 12th May, 2016.

13. Coming to the case in hand, learned counsel for the petitioners has failed to show any mistake apparent on the face of the record. The reliefs sought in the writ petition have been reproduced in the first para of the judgment, thus, there is no ambiguity as to what reliefs were sought by the petitioners. The grounds urged by the petitioners are the grounds which can be made foundation for making an appeal and not for review.

14. Having said so, no such ground has been projected in this review petition, which can be made basis for reviewing the judgment.

15. Viewed thus, no case for review is made out and the review petition merits to be dismissed. Accordingly, the review petition is dismissed alongwith all pending applications, if any.