

(2016) 02 AHC CK 0179
In the Allahabad High Court
Case No : Review Petition No. 762 of 2014.

Mohd. Fazle Haque and Others	Vs	APPELLANT
U.P. Power Corporation Ltd. Lko. Throu its M.D. and Others		RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : (2016) 117 ALR 85 : (2016) 2 ARC 164 : (2016) 132 RD 364

Hon'ble Judges : Ajai Lamba;Aditya Nath Mittal, JJ.

Bench : Division Bench

Advocate : Anurag Kumar Singh and Mohd. Mustafizul Haq, Advocates, for the Appellant; Amit Kumar Singh Bhadauri and Amit Singh Bhadwariya, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ajai Lamba and Aditya Nath Mittal, JJ. - Heard learned counsel for parties and perused the pleadings of review petition.

2. This review petition has been preferred against the judgment and order dated 19.09.2014 passed by a Coordinate Bench of this Court, whereby the writ petition was dismissed. The operative portion on reproduction reads as under:

"Certainly, it is the court of competent jurisdiction which can decide the said questions of fact. Both the parties are claiming their respective possession over the land in dispute, therefore, if the petitioners have any grievance, they can approach the civil court of competent jurisdiction.

In view of the foregoing reasons, the writ petition lacks merit and deserves to be dismissed.

Accordingly, the writ petition is dismissed."

3. There are allegations of the parties that site plan is a fabricated document and it is in dispute that whether the land in dispute was the part of the award or not

and whether in terms of the award, the Electricity Board got possession over the property in dispute or not?

4. These disputed questions of fact can only be decided by a Court of competent jurisdiction and the same has also been observed in our order dated 19.09.2014, which is extracted herein-above.

5. At the very outset, I may refer to the statutory grounds as provided under Order 47, Rule 1 of the Code of Civil Procedure, 1908, for seeking review of a judgment or order passed by this court. They are : (a) that there is discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) that some important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) that there was some mistake or error apparent on the face of record or there is any other sufficient reason.

6. It is also settled that 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.

7. In the judgment of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tiruymale reported at (1960) 1 SCR 890, it has been held as under:

"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."

8. Further, that ratio has been reiterated in the judgment of Hon"ble the Apex Court in Parsion Devi v. Sumiri Devi reported in (1997) 8 SCC 715. The observations made by Hon"ble the Apex Court in the judgment are as:

"Under Order 47, Rule 1 , CPC a judgment may be open 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 its power of review under Order 47, Rule 1 , CPC. In exercise of the jurisdiction under Order 47, Rule 1 , CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise."

9. The aforesaid views were reiterated by Hon"ble the Apex Court also in a later judgment reported at AIR 2006 SC 1634 (Haridas Das v. Smt. Usha Rani Banik and others). Similar views have also been taken in another judgment reported at JT 2009 (9) SC 537 : (2009) 14 SCC 663 (Inderchand Jain (D) through L.Rs. v. Motilal (D) through L.Rs.).

10. Moreover, the scope of the review is very limited as per the ratio laid down by Hon''ble the Supreme Court in the cases of:-

i. Meera Bhanja v. Nirmala Kumari Chaudhary (1995) 1 SCC 170; and

ii. Parsion Devi and others v. Sumitri Devi (1997) 8 SCC 715.

11. In view of all the aforesaid, there is no error/mistake apparent on the face of record nor any question of law of great public importance involved in the present review petition exists.

12. Thus, there is no merit in the review petition and it is dismissed as such.