

**(2014) 07 KAR CK 0152**  
**In the Karnataka High Court**  
**Case No : Review Petition No. 250 of 2014**

M.S. Venkatesh

APPELLANT

Vs

Bharat Petroleum Corporation Ltd.

RESPONDENT

---

**Date of Decision :** 07-07-2014

**Acts Referred:**

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

**Citation :** (2014) 07 KAR CK 0152

**Hon'ble Judges :** Aravind Kumar, J

**Bench :** Single Bench

**Advocate :** M.S. Narayan, Advocates for the Respondent

---

## Judgement

Aravind Kumar, J.—Appellant - plaintiff is seeking review of the judgment passed by co-ordinate bench of this Court in RFA No. 1210/2011 by judgment dated 17.06.2013 whereunder, plaintiffs appeal challenging the correctness and legality of the judgment and decree dismissing plaintiffs suit for declaration to declare termination order passed by Corporation dated 28.05.2001 terminating plaintiffs dealership of petroleum products passed in OS No. 1223/2010 dated 20.06.2011 has been dismissed and judgment and decree passed by the Trial Court came to be affirmed, contending inter alia that against said judgment and decree passed in RFA No. 1210/2011, appellant had filed a Special Leave Petition before the Hon'ble Apex Court and by order dated 28.02.2014, liberty was granted to the petitioner to file a review petition, as such it is stated that present review petition has been filed.

2. I have heard the arguments of Sri. M.S. Venkatesh, party-in-person and Sri. M.S. Narayan, learned counsel appearing for respondent - Corporation. Perused the records.

3. Facts in brief leading to the filing of present review petition can be crystallized as under and parties are referred to as per their ranking in the Court of first instance ("Trial Court").

4. Plaintiff filed a suit for setting-aside the termination order passed by the defendant - Corporation dated 28.05.2001 and subsequent termination order passed on 21.07.2004 with a further direction to defendant to restore back the dealership of plaintiff and to declare the said termination as null and void. By judgment and decree passed in O.S. No. 1223/2010 dated 20.06.2011 suit came to be dismissed. Being aggrieved by the same, an appeal was filed in RFA No. 1210/2011 whereunder, appeal came to be allowed and the judgment of the Trial Court came to be set-aside by remanding the matter to the Trial Court for disposal in accordance with law. Against the judgment passed by the appellate Court, defendant-Corporation filed an appeal before the Hon''ble Apex Court in Civil Appeal No. 8985/2012 which came to be allowed by order dated 12.12.2012 by setting-aside the judgment and decree passed by this Court and remanding the matter back to this Court for fresh consideration.

5. After the order of remand came to be passed by the Hon''ble Apex Court, Co-ordinate Bench of this Court after hearing the plaintiff - appellant - party-in-person and Sri. M.S. Narayan, learned advocate appearing for the Corporation formulated following points for determination.

"i) whether the judgment under appeal suffers from perversity or illegality warranting interference by this Court?

ii) whether the plaintiff is entitled for any of the reliefs sought by this suit?"

6. After considering the rival contentions by judgment and decree dated 17.06.2013 appeal came to be dismissed.

7. Being aggrieved by this judgment, plaintiff filed a Special Leave Petition in SLP (Civil) No. 37900/2013 before the Hon''ble Apex Court and after hearing the party-in-person, the Hon''ble Apex Court granted liberty to the petitioner - appellant to file a review petition.

8. Order passed by the Hon''ble Apex Court dated 28.02.2014 reads as under:

"Petitioner, who is appearing-in-person, has submitted that the contentions which he sought to urge before us, though were raised before the High Court, the Court did not consider.

If that be so, liberty is granted to the petitioner to file a review petition within one month from today and it is for the High Court to consider the same, in accordance with law.

The special leave petition is dismissed with the aforesaid observation."

9. On such liberty being granted by the Hon''ble Apex Court, present review petition has been filed by the plaintiff contending inter alia that order passed by this Court on 17.06.2013 in RFA No. 1210/2011 is opposed to the Rules and Regulations of the company, Rules and norms governing renewal of dealership agreements and erroneous interpretation of clauses in the dealership agreement as also alleged breach of agreement committed by the appellant and failure to

examine the evidence recorded by the lower Court.

10. Sri. M.S. Venkatesh, party-in-person would elaborate his contention by contending that Annexures produced along with review petition namely Exs. P1, P2, P3, P4, P5 and P7 as well as Exs. D5, D27 and D39 was not considered by Co-ordinate Bench of this Court at the time of disposal of the appeal and as such he submits, there is error apparent on the face of the record calling for review of the judgment and decree passed by this Court and as such he prays for allowing the review petition and seeks for restoration of the appeal for being disposed of on merits and in accordance with law.

11. Per contra, Sri. M.S. Narayan, learned counsel appearing for the Corporation would submit that the so called Annexures relied upon by the petitioner were not part of the record and as such, question of these documents being examined by the Appellate Court, while re-appreciating the evidence did not arise and there being no error apparent on the face of the record in the judgment and decree passed by this Court review is not permissible and what is sought by the review petitioner is in disguise of an appeal and petitioner should not be permitted to canvas such issue and as such he prays for dismissal of the review petition with exemplary costs.

12. Having heard the learned advocates appearing for parties and on perusal of records, I am of the considered view that following points would arise for my consideration.

"(i) Whether judgment and decree passed by this Court in RFA No. 1210/2011 dated 17.06.2013 suffers from error apparent on the face of the record or for any other sufficient reason the said judgment requires to be reviewed?

i) What order?"

13. Power of review is not inherent. It has to be exclusively conferred by the statute. Such power is conferred on this Court under Order XLVII Rule 1 of CPC to review the judgment and there cannot be any dispute with regard to said proposition. Order XLVII Rule 1 of 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, any 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 on which he applies for the review."

14. The scope of review has only a limited jurisdiction circumscribed by three distinct factors traceable to the very statutory provisions namely;

"i) Discovery of new and important matters or evidence which after the exercise of due diligence was not within the appellant's knowledge or could not be produced at the time when the decree was passed or order was made;

ii) Mistake or error apparent on the face of the record; or

iii) any other sufficient reasons."

15. An error apparent on the face of the record cannot be denied with mechanical process. There being an element on indefiniteness and inherent in its very nature, it must be determined judicially on the facts of each case. An error which has to be established by long drawn process of reasons cannot be held to be so. Review is by no means an appeal in disguise whereby the erroneous decision is reheard and corrected but lies only for correction of patent error.

16. It has been held by the Hon''ble Apex Court in the case of Parsion Devi and Others Vs. Sumitri Devi and Others, to the following effect.

"Para 7:- It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P. (SCR at p. 186) this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record"). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous, was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is unheard and corrected, but lies only for patent error."

Para 8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury while quoting with approval a passage from Aribam Tuleshwar Sharma V. Aribam Pishak Sharma this Court once again held that 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.

Para 9. 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 it is not permissible for an erroneous decision to be "unheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

17. An error contemplated under Order XLVII Rule 1 of CPC, must be of such nature that it is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. A power of review can be exercised for corrections of a mistake but not to substitute view. The mere possibility of two views is not a ground for review.

18. Review of the order cannot be done unless the Court is satisfied with material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. Hon"ble Apex Court in the case of S.L. Sachdev and Another Vs. Union of India (UOI) and Others, has held as under:

"Para 12: A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante v. Sheikh Habib this Court observed: (SCC p.675, Para 1)

A review of a judgment 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.... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality."

19. It has been held by the Hon"ble Apex Court in catena of judgments that review petition has to be strictly confined to Order XLVII Rule 1 of CPC. It has been held in the case of Kamlesh Verma Vs. Mayawati and Others, to the following effect:

"Para 19: 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 review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction."

20. As to when a review of petition would be maintainable and when the Courts can take recourse for exercising the review jurisdiction has been explained in Kamlesh Verma's case referred to supra by the Hon"ble Apex Court. It has been

held as under:

"20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in Kamlesh Verma Vs. Mayawati and Others, and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the facts of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

21. Keeping these principles in mind, when the contentions of Mr. M.S. Venkatesh, party-in-person are examined it does not detain this Court for long to brush aside the said contention. It has been his contention that Annexures P1 to P7 have not been considered by the Co-ordinate Bench of this Court, while disposing of the appeal on merits. Annexures referred to and relied upon by Mr. M.S. Venkatesh are as under:

22. It has also been contended by Mr. M.S. Venkatesh that there has been non-

consideration of Ex. D5, D27 and D39 by the Co-ordinate Bench of this Court while disposing of this appeal.

23. At the out set, it requires to be noticed that Annexures-P1 to P5 and P7 are all relied upon by the review petitioner in this review petition. Neither of these documents were produced before the Trial Court or even if produced they were not marked as exhibits. Though, an attempt has been made by Mr. M.S. Venkatesh that these documents had been marked, a perusal of the judgment and decree of the Trial Court, as well as the records does not indicate to be so. Since the documents were not produced/marked before the Trial Court and when there is no application for production of the documents as additional evidence, appellate Court is not required to examine said documents. Hence, his contention cannot be accepted.

24. Insofar as Exs. D5, D27 and D39 are concerned, it requires to be noticed that Co-ordinate Bench of this Court at the time of considering the grounds urged by the appellant has examined review petitioner's contentions and also examined Exs. D5, D27 and D39. The discussion on these exhibits in this regard is traceable at Paragraphs 16, 22 and 26 of the judgment. As already observed herein above, non appreciation of evidence in the manner which it is sought to be put forward by the review petitioner cannot be a ground for review. Review is not an appeal in disguise. Hence, contentions of Mr. M.S. Venkatesh cannot be accepted.

25. Point No. (i) accordingly, answered against the review petitioner - appellant.

Re-Point No. (ii):--

26. Though, this Court is inclined to impose on appellant-review petitioner costs, this Court desist from doing it so, for the simple reason that review petitioner has been running around the Courts by filing various petitions and would have obviously spent considerable money and also when he has appeared as party-in-person, it would indicate that if costs are imposed, it may cause undue financial hardship to the review petitioner. Hence, this Court desist from imposing the review petitioner with costs.

27. For the reasons aforesaid, I proceed to pass the following;

ORDER

i) Review petition is hereby dismissed.

ii) No grounds made out to review the judgment and decree passed by this Court in RFA No. 1210/2011 dated 17.06.2013.

iii) No costs.