
(2014) 09 SHI CK 0083
In the High Court Of Himachal Pradesh
Case No : RP No. 4100 of 2013

Nirmla

APPELLANT

Vs

Financial Commissioner (Appeals)

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 22(3), 22(3)(f)
Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, Order 47 Rule 1, Order 47 Rule 47, Order 47 Rule 47, 114
Constitution of India, 1950 — Article 137, 145, 226

Citation : (2014) 09 SHI CK 0083

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : G.D. Verma, Senior Advocate and B.C. Verma, Advocate for the Appellant; Shrawan Dogra, Advocate General, V.S. Chauhan, Addl. A.Gs., J.K. Verma, Kush Sharma, Dy. A.Gs., Bhupender Gupta, Senior Advocate, Janesh Gupta and Charu Gupta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.—By the medium of this Review Petition, the petitioners have sought review of the judgment and order, dated 6th September, 2013, passed by a Division Bench of this Court, whereby Letters Patent Appeal No. 114 of 2013 came to be dismissed.

2. Respondents filed objections and resisted the same.

3. We have heard the learned counsel for the parties and have gone through the relevant record.

4. it is averred by the review petitioners that respondents No. 2 to 7 in the Writ Petition i.e. CWP No. 1312 of 2007, out of which LPA No. 114 of 2013 had arisen, filed a revision petition before the Financial Commissioner (Appeals), Himachal Pradesh, after 27 years from the date of passing of the order in the said revision petition. The Financial Commissioner (Appeals) condoned the delay in filing the

revision petition and set aside the order passed by the Assistant Collector on 30th November, 1979 and the matter was remanded to the Land Reforms Office, Shimla for conducting inquiry into the matter. Feeling aggrieved, the petitioners questioned the said order of the Financial Commissioner by way of Writ Petition, being CWP No. 1312 of 2007, was dismissed, vide judgment and order, dated 3rd January, 2013. The writ petitioners thereafter questioned the same by way of Letters Patent Appeal (LPA No. 114 of 2013), was also dismissed, vide order, dated 6th September, 2013.

5. Mr. G.D. Verma, learned Senior Counsel for the review petitioners, argued that the Writ Court i.e. the learned Single Judge as well as the Division Bench have fallen in error in dismissing the writ petition and the Letters Patent Appeal for the reason that the civil courts i.e. the court of the Sub Judge 1st Class and the Additional District Judge have already determined the issue. Thus, the order of remand passed by the Financial Commissioner was bad in law.

6. The learned Senior Counsel for the review petitioners tried to carve out a case on the ground that the judgments made by the civil courts i.e. by the Sub Judge 1st Class and by the Appellate Court have not been discussed. The learned Senior Counsel for the review petitioners was asked to show whether any mistake is apparent on the face of record, which can be detected without making long drawn discussions. Instead, the learned Senior Counsel argued that the Financial Commissioner had wrongly condoned the delay after a gap of 27 years and the order of remand is also illegal. The Writ Court in the writ petition and the Appellate Court in the Letters Patent Appeal have also not disturbed the said findings of the Financial Commissioner, thus, the order passed by the Writ Court as well as by the Appellate Court are illegal. It was further submitted that the findings of the Civil Court are in favour of the review petitioners.

7. During the course of hearing, the learned Senior Counsel for the review petitioners has relied upon the decisions in Khushi Ram and Others Vs. State of H.P. and Others, , Mehar Chand and Others Vs. Rakesh and Others, , Woodland Society, Andretta vs. Smt. Pinki Devi and others, Latest HLJ 2010 (HP) 1404, and Kanta Devi vs. Durga Singh, Latest HLJ 2012 (HP) 886.

8. On the other hand, Mr. Bhupender Gupta, learned Senior Counsel for respondents No. 2 to 6, while supporting the judgment under review, has relied upon the judgment in N. Anantha Reddy Vs. Anshu Kathuria and Others, , wherein it was held that the review jurisdiction is very limited and unless there is mistake apparent on the face of record, the order/judgment does not call for review. He, therefore, prayed that the Review Petition may be dismissed.

9. 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. A reference may be made to Section 114 CPC and Order 47 Rule 1 CPC hereunder:

"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 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.

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."

10. I, as a Judge of the Jammu and Kashmir High Court, while sitting in Division Bench, authored a judgment in case titled Muzamil Afzal Reshi vs. State of J & K & Ors., Review (LPA) No. 16/2009, decided on 29.3.2013, 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.

11. The Division Bench of this Court has also laid down the similar principle in

Review Petition No. 4084 of 2013, titled M/s. Harvel Agua India Private Limited vs. 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 long-drawn 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 "re-heard 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 judgment 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 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. 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."

12. The Apex Court in case Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs., , 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 apt to reproduce paragraph 10 of the said decision hereunder:

"10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing 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, Vs. Union of India and Others, , 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.""

13. The Apex Court in case Haryana State Industrial Development Corporation Ltd. and Others Vs. Mawasi and Others etc. etc., , has discussed the law, on the subject in hand, 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 quasi-judicial 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.

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."

10. The aforesaid provisions have been interpreted in several cases. We shall notice some of them. In *S. Nagaraj and Others Vs. State of Karnataka and Another*, , this Court referred to the judgments in AIR 1941 1 (Federal Court) and *Rajunder Narain Rae v. Bijai Govind Singh* (1836) 1 Moo PC 117 and observed:

"Review literally and even judicially means re-examination or re-consideration. 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 Constitution-makers 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 and Another Vs. The Most Rev. Mar Poulouse Athanasius and Others*, , 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 CPC 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 AIR 1922 112 (Privy Council) . This conclusion was reiterated by the Judicial Committee in AIR 1934 213 (Privy Council) and was adopted by on Federal Court in AIR 1949 106 (Federal Court) . 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. Vs. The Government of Andhra Pradesh, , another three-Judge 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 Vs. Aribam Pishak Sharma and Others, , 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 *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, , the Court considered as to what can be characterised as an error apparent on the face 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 long-drawn 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 and Others Vs. Millikarjun Bhavanappa Tirumale*, 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 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."

15. In *Parsion Devi and Others Vs. Sumitri Devi and Others*, , the Court observed:

"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..... 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, Vs. Union of India and Others*, , 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 Vs. Smt. Usha Rani Banik and Others*, , 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 *The State of West Bengal and Others Vs. Kamal Sengupta and Another*, , 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 self-evident 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."

14. The Apex Court in a recent judgment in case *Akhilesh Yadav Vs. Vishwanath Chaturvedi and Others*, , 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."

15. We have gone through the judgment made by the learned Single Judge and the judgment under review. The Financial Commissioner made the order of remand. The question whether the Financial Commissioner had the power to condone the delay or otherwise, was discussed by the Writ Court and the writ petition was dismissed. The Appellate Court also held that the issue pertains to land laws, therefore, the question raised can be determined and answered by the Tenancy Authority.

16. Thus, applying the tests to the instant case, there is no mistake/error apparent on the face of record. The ground that the order is illegal can be taken by way of filing appeal before the Appellate Court and not before the Review Court.

17. Having said so, the review petition merits to be dismissed and the same is dismissed.