

**(2026) 08 DEL CK 3863**

**In the Delhi High Court, Principal Bench, New Delhi**

**Case No : RC.REV. 367/2018**

Nisar Ahmed

APPELLANT

Vs

Agya Pal Singh

RESPONDENT

**Date of Decision : 03-08-2026**

**Acts Referred:**

Civil Procedure Code, 1908 — Order XLVII Rule 1, Section 151, 115, 97(3), 32(2)(i), VII Rule 11, 9, 21, 114, 47 Rule 1, 47, 113, 206, 623, VII, Rule 11  
Waqf Act, 1995 — Section 83, 85, 37, 5(2), 6(1), 7(1), 32(3), 33(4), 35(1), 38(7), 39(3), 40(4), 48(2), 52(4), 54(3), 64(4), 67(4), 67(6), 69(3), 73(3), 83(1), 94, 54, 3, 54(3) & (4), 3(r), 2, 55  
The Waqf (Amendment) Act, 2013 (Act No.27 of 2013)  
General Clauses Act — Section 6  
Constitution of India — Article 226  
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947  
Maharashtra Rent Control Act, 1999  
Securities and Exchange Board of India Act, 1992 — Section 15Z  
Administrative Tribunals Act, 1985 — Section 22(3)(f)  
Code of Civil Procedure (Amendment) Act, 1976  
Travancore Code of Civil Procedure  
Arbitration and Conciliation Act, 1996 — Section 9  
Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015  
Commercial Courts Act — Section 10(2)  
Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 8-C, 8-C(2)  
Delhi Rent Control Act

**Citation : (2026) 08 DEL CK 3863**

**Hon'ble Judges : Amit Sharma, J**

**Bench : Single Bench**

**Advocate :** Mr. Rajat Aneja, Mr. Abhinav Chauhan, Mr. Karan Deep Singh, Mr. Aditya Sharma and Mr. Saubhagya Chauriha, Mr. Raman Kapur, Mr. Siddharth Aggarwal, Ms. Arohi Pal and Mr. Divyansh Singh

**Final Decision : Dismissed**

**Judgement**

**Amit Sharma, J.**

**CM APPL. 42293/2023, CM APPL. 35407/2025 & REVIEW PET. 221/2023**

1. The present review petition under Order XLVII Rule 1 and Section 151 of the Civil Procedure Code, 19081, filed on behalf of the respondent/tenant seeks the following prayers: -

"1. Allow the present Review and set-aside the judgment dated 7.7.2023 and pursuant thereto dismiss the revision petition of the petitioner.

2. Pass any such or further order that this Hon'ble Court may be deemed fit and proper in the facts and circumstances of this present case."

2. The present review petition has been filed seeking review of the judgment dated 07.07.2023, whereby revision petition of the petitioner/landlord was allowed and an eviction order was passed against the respondent.

3. Learned Senior counsel for the respondent has contended that in view of the amendment to Section 83 of the Waqf Act, 19952, learned ARC would not have jurisdiction to entertain a petition for eviction of the tenant with regard to Waqf property and it would be Waqf Tribunal which would have jurisdiction to adjudicate upon a petition for eviction of a tenant from Waqf property. It is submitted that issue of impact on change of forum is a procedural aspect, and therefore, the said Amendment is retrospective in nature, and reliance has been placed in support of this contention on a judgment of Hon'ble Supreme Court in **Neena Aneja and Ors. v. Jai Prakash Associates Ltd.**<sup>3</sup>, and in particular, on the following paragraph: -

"72. In considering the myriad precedents that have interpreted the impact of a change in forum on pending proceedings and retrospectivity—a clear position of law has emerged : a change in forum lies in the realm of procedure. Accordingly, in compliance with the tenets of statutory interpretation applicable to procedural law, amendments on matters of procedure are retrospective, unless a contrary intention emerges from the statute. This position emerges from the decisions in *New India Assurance [New India Assurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840]* , *Maria Cristina [Maria Cristina De Souza Sodder v. Amria Zurana Pereira Pinto, (1979) 1 SCC 92]* , *Hitendra Vishnu Thakur [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087]* , *Ramesh Kumar Soni [Ramesh Kumar Soni v. State of M.P., (2013) 14 SCC 696 : (2014) 4 SCC (Cri) 340]* and *Sudhir G. Angur [Sudhir G. Angur v. M. Sanjeev, (2006) 1 SCC 141]* . More recently, this position has been noted in a three-Judge Bench decision of this Court in *Manish Kumar v. Union of India [Manish Kumar v. Union of India, (2021) 5 SCC 1 : (2021) 3 SCC (Civ) 50]* . However, there was a deviation by a two-Judge Bench decision of this Court in *Dhadi Sahu [CIT v. Dhadi Sahu, 1994 Supp (1) SCC 257]* , which overlooked the decision of a larger three-Judge Bench in *New India Assurance [New India Assurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840]* and of a coordinate two-Judge Bench in *Maria Cristina [Maria Cristina De Souza Sodder v. Amria Zurana Pereira Pinto, (1979) 1 SCC 92]* . The decision in *Dhadi Sahu [CIT v. Dhadi Sahu, 1994 Supp (1) SCC 257]* propounded a position that : ( *Dhadi Sahu case [CIT v. Dhadi Sahu, 1994 Supp (1) SCC 257]* , SCC p. 262, para 21)

"21. ... no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed

*before a particular forum. The right becomes vested when the proceedings are initiated in the tribunal."*

(emphasis supplied)

In taking this view, the two-Judge Bench did not consider binding decisions. *Dhadi Sahu* [ *CIT v. Dhadi Sahu*, 1994 Supp (1) SCC 257] failed to consider that the saving of pending proceedings in *Mohd. Idris* [*Mohd. Idris v. Sat Narain*, (1966) 3 SCR 15 : AIR 1966 SC 1499] and *Manujendra Dutt* [*Manujendra Dutt v. Purnedu Prosad Roy Chowdhury*, (1967) 1 SCR 475 : AIR 1967 SC 1419] was a saving of vested rights of the litigants that were being impacted by the repealing Acts therein, and not because a right to forum is accrued once proceedings have been initiated. **Thereafter, a line of decisions followed *Dhadi Sahu* [ *CIT v. Dhadi Sahu*, 1994 Supp (1) SCC 257] , to hold that a litigant has a crystallised right to a forum once proceedings have been initiated. A litigant's vested rights (including the right to an appeal) prior to the amendment or repeal are undoubtedly saved, in addition to substantive rights envisaged under Section 6 of the General Clauses Act. This protection does not extend to pure matters of procedure. Repeals or amendments that effect changes in forum would ordinarily affect pending proceedings, unless a contrary intention appears from the repealing or amending statute."**

(emphasis supplied)

4. Learned Senior Counsel for the respondent has also placed reliance on the judgment of Hon'ble Supreme Court in **Shiv Shakti Coop. Housing Society v. Swaraj Developers**<sup>4</sup>, and in particular, on the following paragraph: -

"32. A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is "yes" then the revision is maintainable. But on the contrary, if the answer is "no" then the revision is not maintainable. Therefore, if the impugned order is interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject-matter of revision under Section 115. There is marked distinction in the language of Section 97(3) of the Old Amendment Act and Section 32(2)(i) of the Amendment Act. While in the former, there was a clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32(2)(i).

The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered, the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation."

5. Learned Senior Counsel for the respondent further submitted that the subject eviction petition was not maintainable in law before learned Rent Controller as he lacked inherent jurisdiction to entertain the same in view of the expressed bar as provided under Sections 83 and 85 of the Waqf Act. Consequently, this Court also does not have jurisdiction to entertain the present revision petition. It is pointed out that the present eviction petition was originally filed by the petitioner/ landlord on 24.07.2009, claiming himself to be the *Muttawali* of a *Waqf*, and the same was rejected under Order VII Rule 11 of the CPC on 26.05.2011. That

order was challenged in the revision proceedings, which were allowed on 11.02.2015 and SLP against the same was dismissed. Thereafter completion of full trial, the eviction petition was dismissed *vide* order dated 07.06.2018, so the petitioner/landlord preferred the revision petition which was allowed by way of judgment dated 07.07.2023 passed by the learned Single Judge of this Court. It is contended by learned Senior Counsel for the respondent that the Waqf Amendment Act, 2013 is procedural in nature, and have to be given retrospective application in the context of change of forum and jurisdictional provisions. It is the case of the respondent that the retrospective effect of the said amendment can be seen from the bare perusal of the language of Section 85 of the Waqf Act, and in view of the same, the proceedings before Rent Controller could not be stated to have been continued after Amendment Act, 2013 came into being.

6. Learned Senior Counsel for the respondent has further placed reliance on following observations in **Mumtaz Yarud Dowla Waqf v. Badam Balakrishna Hotel5**: -

#### **"CHANGE OF FORUM**

18. We shall now come to the issue of retrospective application and change of forum. As discussed, when a statute is amended on an issue pertaining to a forum for adjudication, it being procedural takes effect retrospectively. A party to a *lis* does not have any vested right of forum as against action. In the absence of any substantive right being subsumed by a particular forum, one has to give retrospective application. *New India Insurance Co. Ltd. v. Smt. Shanti Misra, Adult*, (1975) 2 SCC 840,

"5. On the plain language of Sections 110A and 110F there should be no difficulty in taking the view that the change in law was merely a change of forum i.e. **a change of adjectival or procedural law and not of substantive law. It is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to causes of action arising after the creation of the forum, then the retrospective operation of the law is taken away. Otherwise the general rule is to make it retrospective.** The expressions "arising out of an accident" occurring in sub-section (1) and "over the area in which the accident occurred", mentioned in sub-section (2) clearly show that the change of forum was meant to be operative retrospectively irrespective of the fact as to when the accident occurred. To that extent there was no difficulty in giving the answer in a simple way. But the provision of limitation of 60 days contained in subsection (3) created an obstacle in the straight application of the well-established principle of law. If the accident had occurred within 60 days prior to the constitution of the tribunal then the bar of limitation provided in sub-section (3) was not an impediment. An application to the tribunal could be said to be the only remedy. If such an application, due to one reason or the other, could not be made within 60 days then the tribunal had the power to condone the delay under the proviso. But if the accident occurred more than 60 days before the constitution of the tribunal then the bar of limitation provided in sub-section (3) of Section 110A on its face was attracted. This difficulty of limitation led most of the High Courts to fall back upon the proviso and say that such a case will be a fit one where the tribunal would be able to condone the delay

under the proviso to sub-section (3), and led others to say that the tribunal will have no jurisdiction to entertain such an application and the remedy of going to the civil court in such a situation was not barred under Section 110F of the Act. While taking the latter view the High Court failed to notice that primarily the law engrafted in Sections 110A and 110F was a law relating to the change of forum.”

(emphasis supplied)

19. *Hitendra Vishnu Thakur v. State of Maharashtra*, (1994) 4 SCC 602,

“26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) **A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.**

(ii) **Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.**

(iii) **Every litigant has a vested right in substantive law but no such right exists in procedural law.**

(iv) **A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.**

(v.) **A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”**

(emphasis supplied)

20. *Neena Aneja v. Jai Prakash Associates Ltd.*, (2022) 2 SCC 161,

“58. SEBI argued before this Court that a change of the forum for trial was a matter of mere procedure and would, therefore, be retrospective, there being no express or implied intent either in the 2002 and 2014 Amendments that the amendments were intended to be of prospective effect. J.S. Khehar, J. speaking for the two-Judge Bench of this Court adverted to the decisions inter alia in *New India Assurance [New India Assurance Co. Ltd. v. Shanti Misra]*, (1975) 2 SCC 840], *Ramesh Kumar Soni [Ramesh Kumar Soni v. State of M.P.]*, (2013) 14 SCC 696 : (2014) 4 SCC (Cri) 340] and *Hitendra Vishnu Thakur [Hitendra Vishnu Thakur v. State of Maharashtra]*, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087], and observed in that context : (*Classic Credit case [SEBI v. Classic Credit Ltd.]*, (2018) 13 SCC 1 : (2019) 1 SCC (Cri) 431], SCC pp. 67-68, para 49)

“49. ... In our considered view, the legal position expounded by this Court in a large number of judgments including *New India Assurance Co. Ltd. v. Shanti Misra* [(1975) 2

SCC 840] ; *SEBI v. Ajay Agarwal* [(2010) 3 SCC 765 : (2010) 2 SCC (Cri) 491] and *Ramesh Kumar Soni v. State of M.P.* [(2013) 14 SCC 696 : (2014) 4 SCC (Cri) 340], is clear and unambiguous, namely, that procedural amendments are presumed to be retrospective in nature, unless the amending statute expressly or impliedly provides otherwise. And also, that generally change of “forum” of trial is procedural, and normally following the above proposition, it is presumed to be retrospective in nature unless the amending statute provides otherwise. This determination emerges from the decision of this Court in *Hitendra Vishnu Thakur v. State of Maharashtra* [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087] ; *Ranbir Yadav v. State of Bihar* [(1995) 4 SCC 392 : 1995 SCC (Cri) 728] and *Kamlesh Kumar v. State of Jharkhand* [(2013) 15 SCC 460 : (2014) 6 SCC (Cri) 489], as well as, a number of further judgments noted above.”

**59. The above observations indicate the clear view of this Court that:**

**59.1. In the absence of a contrary intent express or implied, procedural amendments are presumed to be retrospective.**

**59.2. A change in the forum of a trial is a procedural matter.**

**59.3. Since a change of forum is procedural, a statute which brings about the change is presumed to be retrospective in the absence of a contrary intent.**

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### **C.23. Conclusion on the position of law**

72. In considering the myriad precedents that have interpreted the impact of a change in forum on pending proceedings and retrospectivity— a clear position of law has emerged : a change in forum lies in the realm of procedure. Accordingly, in compliance with the tenets of statutory interpretation applicable to procedural law, amendments on matters of procedure are retrospective, unless a contrary intention emerges from the statute. This position emerges from the decisions in *New India Assurance [New India Assurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840]*, *Maria Cristina [Maria Cristina De Souza Sodder v. Amria Zurana Pereira Pinto, (1979) 1 SCC 92]*, *Hitendra Vishnu Thakur [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087]*, *Ramesh Kumar Soni [Ramesh Kumar Soni v. State of M.P., (2013) 14 SCC 696 : (2014) 4 SCC (Cri) 340]* and *Sudhir G. Angur [Sudhir G. Angur v. M. Sanjeev, (2006) 1 SCC 141]*. More recently, this position has been noted in a three-Judge Bench decision of this Court in *Manish Kumar v. Union of India [(2021) 5 SCC 1 : (2021) 3 SCC (Civ) 50]*. However, there was a deviation by a two-Judge Bench decision of this Court in *Dhadi Sahu [CIT v. Dhadi Sahu, 1994 Supp (1) SCC 257]*, which overlooked the decision of a larger three-Judge Bench in *New India Assurance [New India Assurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840]* and of a coordinate two-Judge Bench in *Maria Cristina [Maria Cristina De Souza Sodder v. Amria Zurana Pereira Pinto, (1979) 1 SCC 92]*. The decision in *Dhadi Sahu [CIT v. Dhadi Sahu, 1994 Supp (1) SCC 257]* propounded a position that : (*Dhadi Sahu case [CIT v. Dhadi Sahu, 1994 Supp (1) SCC 257]*, SCC p. 262, para 21)

“21. ... no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when the proceedings are initiated in the tribunal.”

(emphasis supplied)

In taking this view, the two-Judge Bench did not consider binding decisions. *Dhadi Sahu [CIT v. Dhadi Sahu, 1994 Supp (1) SCC 257]* failed to consider that the saving of pending

proceedings in *Mohd. Idris* [*Mohd. Idris v. Sat Narain*, (1966) 3 SCR 15 : AIR 1966 SC 1499] and *Manujendra Dutt* [*Manujendra Dutt v. Purnedu Prosad Roy Chowdhury*, (1967) 1 SCR 475 : AIR 1967 SC 1419] was a saving of vested rights of the litigants that were being impacted by the repealing Acts therein, and not because a right to forum is accrued once proceedings have been initiated. Thereafter, a line of decisions followed *Dhadi Sahu* [*CIT v. Dhadi Sahu*, 1994 Supp (1) SCC 257], to hold that a litigant has a crystallised right to a forum once proceedings have been initiated. A litigant's vested rights (including the right to an appeal) prior to the amendment or repeal are undoubtedly saved, in addition to substantive rights envisaged under Section 6 of the General Clauses Act. This protection does not extend to pure matters of procedure. Repeals or amendments that effect changes in forum would ordinarily affect pending proceedings, unless a contrary intention appears from the repealing or amending statute."

## **COURT MUST SATISFY ITSELF AS TO THE EXISTENCE OF JURISDICTION**

### **Section 9 of the Code**

"9. Courts to try all civil suits unless barred.—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred.

*Explanation I.*—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

*Explanation II.*—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.""

7. Reliance has also been placed by learned Senior Counsel for the respondent on a judgment of Hon'ble Supreme Court in **Sudhir G. Angur and Ors. v. M. Sanjeev and Ors.**<sup>6</sup>, in particular, on the following paragraph: -

"11. In our view, Mr G.L. Sanghi is also right in submitting that it is the law on the date of trial of the suit which is to be applied. In support of this submission, Mr Sanghi relied upon the judgment in *Shiv Bhagwan Moti Ram Saraoji v. Onkarmal Ishar Dass* [AIR 1952 Bom 365 : 54 Bom LR 330] wherein it has been held that no party has a vested right to a particular proceeding or to a particular forum. It has been held that it is well settled that all procedural laws are retrospective unless the legislature expressly states to the contrary. It has been held that the procedural laws in force must be applied at the date when the suit or proceeding comes on for trial or disposal. It has been held that a court is bound to take notice of the change in the law and is bound to administer the law as it was when the suit came up for hearing. It has been held that if a court has jurisdiction to try the suit, when it comes on for disposal, it then cannot refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date when it was instituted. We are in complete agreement with these observations. As stated above, the Mysore Act now stands repealed. It could not be denied that now the Court has jurisdiction to entertain this suit."

8. Learned Senior Counsel for the respondent further submitted that the aforesaid judgments have not been considered in the judgment dated 07.07.2023. Thus, the present review petition has been filed seeking review of the said judgment which suffers from the error apparent on the face of it.

9. Learned Senior Counsel for the respondent has also relied upon the following

judgments: -

a) **Simplex Infrastructure v Energo Engineering Projects**<sup>7</sup>, and particularly on paragraph Nos. 3, 9, 18, 20 and 21 thereof, to contend that lack of jurisdiction if an error apparent on the face of the record and such order passed *sans* jurisdiction is liable to be reviewed.

b) **Selection Committee for Admission v MP Nagaraj** <sup>8</sup>, and particularly on paragraph Nos. 1, 2 and 24, to contend that where a Court takes a view inconsistent with the Supreme Court, it is an error apparent on the face of the record and is liable to be reviewed.

c) **Board of Control for Cricket v Netaji Cricket Club**<sup>9</sup>, and particularly on paragraph Nos. 88, 89, 90 and 91, to contend that review is necessitated on account of some mistake or for any other sufficient reason which may include misconception of fact or law and the law has to bend before justice and nothing would preclude the Court from rectifying the error.

d) **M.M Thomas v State of Kerala**<sup>10</sup>, and particularly on paragraph Nos. 14, 16 and 17, to contend that High Courts are courts of record and therefore have the inherent power to correct the record. If an error apparent is noticed by the High Court, it is its duty to correct the same in accordance with the law.

e) **Rakesh Kesharwani v Imam Bada Shahedaan Karbala**<sup>11</sup>, and particularly on paragraph Nos. 1, 7 and 10, to contend that the Waqf Amendment Act, 2013, is a procedural amendment, and has to be applied retrospectively.

10. *Per contra*, learned counsel for the petitioner/non-applicant has submitted that *vide* judgment dated 07.07.2023 learned Predecessor Bench of this Court had allowed the revision petition filed by the petitioner and had set aside the order of dismissal of eviction petition filed by the petitioner and an eviction order was passed against the respondent herein. It is submitted that the respondent for the first time during final arguments in the revision petition had contended that the same was not maintainable on the ground that the disputed property was a waqf property, and in view of Section 83 of the Waqf Act, 1995, all matters relating to eviction of tenants in respect of waqf properties must be indicated by the Waqf Tribunal. It is further submitted that the eviction petition in the present case was filed by the petitioner/landlord in 2009, *i.e.*, prior to the amendment of 2013 in Waqf Act, 1995. It is further submitted that *non-obstante* clause in DRCA, which is a special statute, overrides the general amendments in the Waqf Act in absence of any express statutory provision to that effect.

11. It is the case of the petitioner/non-applicant that the procedural changes introduced by Waqf Amendment Act, 2013, could not affect the substantive rights of the parties, particularly in a case where subject eviction proceedings were initiated prior to such amendment. The petitioner has refuted the respondent's assertion that the amendment by Waqf Amendment Act, 2013 to Section 83 of the Waqf Act was procedural in nature, and is, therefore, applicable

retrospectively.

12. It is further submitted that the aforesaid objection regarding applicability of Waqf Act was raised by the respondent in December 2022 despite being aware of the same since Amendment Act of 2013. It is further submitted that the statutory tenants under DRCA could not be removed from the jurisdiction of DRCA, even if, the property in question is a Waqf property unless there is a specific provision for judicial order mandating such transfer to Waqf Tribunal.

13. Learned counsel for the petitioner has placed relied on the judgment of Hon'ble Supreme Court in **Habib Alladin & Ors. v. Mohammed Ahmed**<sup>12</sup>, in particular, on paragraph Nos. 31, 32, 33, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, in support of the aforesaid contentions. The observations contained in said paragraphs read thus: -

"31. It is trite that an Amendment will be retrospective only if expressly provided for and at times, when it follows by necessary implication. In *Garikapati Veeraya v. N. Subbiah Choudhry*<sup>23</sup>, a Constitution Bench of this Court reaffirmed the principle that a vested right can be taken away by a subsequent enactment which by express words or necessary intendment makes it retrospective. *Dayawati v. Inderjit*<sup>24</sup> held that the relief granted by an Act prohibiting future interest, is applicable to appeals pending from decrees passed, looking at the necessary intendment. The principles culled out in *Hitendra Vishnu Thakur v. State of Maharashtra*<sup>25</sup>, in para 26 is extracted hereunder:

"26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

**32. The amendment in 2013 providing an expanded definition of 'list of Auqaf' was procedural in nature since it merely enabled the disputes with respect to whether a property entered in the register maintained under Section 37, is a waqf property or not, also to be resolved by the Waqf Tribunal, as were similar**

disputes pertaining to those included in the list under Section 5(2) enabled to be resolved by the Tribunal. The right of action remained as such but the forum in which the issue had to be agitated was specified to be the Tribunal under the Act of 1995.

33. An amendment by way of substitution does not invariably result in a retrospective application. In the Act of 1995, originally the definition of 'list of Waqfs' included only that notified under Section 5(2), which later was substituted, including also the register maintained under Section 37; which was in rectification of an anomaly, applicable from the inception of the Act. In *Zile Singh v. State of Haryana*<sup>26</sup>, a three-Judge Bench while reaffirming that retrospectivity is not to be presumed and the presumption is to the contrary, held it was open for the legislature to enact laws having retrospective operation, by express enactment or by necessary implication from the language employed. It was held so, in paragraphs 15, 17 and 19:

"15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7thEdn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right."

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"17. Maxwell states in his work on Interpretation of Statutes (12thEdn.) that the rule against retrospective operation is a presumption only, and as such it "may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it" (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "vary secundum materiam" (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act."

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"19. The Constitution Bench in *Shyam Sunder v. Ram Kumar*, [(2001) 8 SCC 24] has held: "Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word 'declaration' in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective."

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37. More importantly, we cannot find Section 83 to be a provision conferring jurisdiction on the Tribunal with respect to matters in addition to which already jurisdiction has been conferred under the other provisions of the Act, as already noticed in *Ramesh Gobindram*<sup>6</sup>. Section 83 has a nominal heading of '*Constitution of the Tribunal etc.*' and it enables the State Government by notification in the official gazette to constitute as many Tribunals as it may think fit for the determination of disputes, questions or other matters relating to a waqf or waqf property under this Act. The last three words have not been omitted in the amendment, as we found in paragraph 10, which we will deal with more elaborately when considering the ambit and scope of Section 83.

\* \* \* \* \*

**39. The gamut of decisions referred to above, or most of them were considered in *Rashid Wali Beg*<sup>5</sup> which held, again, that the amendment made by Act 27 of 2013 removed the basis of the decision in *Ramesh Gobindram*<sup>6</sup>; which, with all the respect at our command, we are unable to subscribe to. *Rashid Wali Beg*<sup>5</sup> was a case in which the defendant in a suit, challenged the judgment of the High Court, which held that a permanent injunction prayer before a Civil Court is not barred by Section 85 of the Act of 1995.** The plaintiff filed the suit on the contention that the predecessor-in-interest of the property had created a Waqf-al-al-aulad and the Mutawalli was appointed by way of succession from the descendants, which position came to be occupied by him; in usurpation of his father's right, as entrusted to him by the grandmother due to the wayward life of the father. The defendants at the instigation of the father of the plaintiff was alleged to have encroached into the property and attempted constructions thereon. The defendant who was the appellant before the Supreme Court, filed a written statement admitting the existence of the waqf. Later, the defendant took out an application under Order VII Rule 11 for rejection of the plaint on the sole ground of the Civil Court having no jurisdiction. The Civil Court accepted the prayer and rejected the suit, and the First Appellate Court dismissed the appeal. The High Court reversed the finding of the Courts below on the short ground that the nature of the property was not a question involved in the case and hence, the simpliciter injunction sought for would be maintainable before the Civil Court. This Court tabulated the various provisions and the reliefs which could be sought for before a Tribunal and culled out the aspects on which proceedings could be initiated before the Tribunal constituted under the Wakf Act of 1995 in paragraphs 54 which we extract hereunder: -

"54. *In sum and substance, the Act makes a reference, to 3 types of remedies, namely, that of a suit, application or appeal before the Tribunal, in respect of the following matters:*

54.1. *Any question or dispute whether a property specified as waqf property in the list of waqfs is a waqf property or not [Sections 6(1) & 7(1)].*

54.2. *A question or dispute whether a waqf specified in the list of waqfs is a Shia Waqf or Sunni Waqf [Sections 6(1) & 7(1)].*

54.3. *Challenge to the settlement of a scheme for management of the waqf or any direction issued in relation to such management [Section 32(3)].*

54.4. *Challenge to an order for restitution/restoration of the property of the waqf or an order for payment to the waqf of any amount misappropriated or fraudulently retained by the mutawalli [Section 33(4)].*

54.5. *Conditional attachment of the property of a mutawalli or any other person [Section*

35(1)].

54.6. *Challenge to the removal or dismissal of an Executive Officer or member of the staff [Section 38(7)].*

54.7. *Application by the Board, seeking an order for recovery of possession of a property earlier used for religious purpose but later ceased to be used as such [Section 39(3)].*

54.8. *Challenge to a direction issued by the Board to any Trust or Society to get it registered [Section 40(4)].*

54.9. *Challenge to an order for recovery of money from the mutawalli, as certified by the Auditor [Section 48(2)].*

54.10. *Challenge to an order for delivery of possession of a property issued by the Collector [Section 52(4)].*

54.11. *Application by the Chief Executive Officer for the removal of encroachment and for delivery of possession of a waqf property [Section 54(3)].*

54.12. *Challenge to the removal of mutawalli from office [Section 64(4)].*

54.13. *Challenge to an order superseding the Committee of Management [Section 67(4)].*

54.14. *Challenge to the removal of a member of the Committee of Management [Section 67(6)].*

54.15. *Challenge to any scheme framed by the Board for the administration of waqf, containing a provision for the removal of the mutawalli and the appointment of the person next in hereditary succession [Section 69(3)].*

54.16. *Challenge to an order for recovery of contribution payable by the waqf to the Board, from out of the monies lying in a bank [Section 73(3)].*

54.17. *Any dispute, question or other matter relating to a waqf [Section 83(1)].*

54.18. *Any dispute, question or other matter relating to a waqf property [Section 83(1)].*

54.19. ***Eviction of a tenant or determination of the rights and obligations of lessor and lessee of waqf property [Section 83(1) after its amendment under Act 27 of 2013].***

54.20. *Whenever a mutawalli fails to perform an act or duty which he is liable to perform [Section 94]."*

**40. We have absolutely no doubt with respect to paragraphs 54.1 to 54.16 and 54.20; which we respectfully concur with. The expansion of the jurisdiction based on Section 83 as has been laid down in paragraphs 54.17 to 54.19, according to us is contrary to the principles culled out in *Ramesh Gobindram*<sup>6</sup> and quite divergent from the interpretation of Section 83 coming out in *Ramesh Gobindram*<sup>6</sup>.**

41. This Court, no doubt, in *Rashid Wali Beg*<sup>5</sup> looked at the various decisions which followed *Ramesh Gobindram*<sup>6</sup> and took a contrary view, holding that the very basis of the decision was removed by Act 27 of 2013. It was held that Section 83(1) even as it stood before the amendment provided for determination by the Tribunal, any dispute, question or other matter, (i) relating to waqf and (ii) relating to a waqf property. Thus, holding that Section 83 has two limbs conferring jurisdiction on the Tribunal to decide questions arising with respect to (i) the waqf and (ii) the waqf property. To get over the divergence of opinion the decision in *Kiran Devi*<sup>22</sup> was relied on, a three-Judge Bench decision to find that definitely if the Waqf Tribunal did not have jurisdiction to decide the question, the Court would not have held so in *Kiran Devi*<sup>22</sup>.

42. We are unable to agree. In *Kiran Devi*<sup>22</sup> the plaintiff had approached the Civil Court against the possession of a tenanted premises by one of the defendants, on such demise being made by the Waqf Board itself, of an admitted waqf property. Therein the dispute was between the tenants, one of whom was supported by the Waqf Board. The defendant tenant and the Waqf Board, sailing together, requested for a transfer of the proceedings to the Tribunal and later, before this Court a contention was raised that the Tribunal did not have jurisdiction. True, the three-Judge Bench despite referring to *Ramesh Gobindram*<sup>6</sup> found that the defendants having requested for a transfer to the Tribunal, could not later challenge the jurisdiction especially when the matter had attained finality before the Tribunal and there was no such contention raised, even before the High Court. The High Court reversed the order of the Trial Court only on the ground that the surrender of tenancy was not proper. The above measure employed by a three-Judge Bench cannot be said to have overruled *Ramesh Gobindram*<sup>6</sup>. As was explicitly stated by the three Judge bench, the decision turned on the principle that a party to a litigation cannot approbate and reprobate and this was a measure adopted to avoid multiplicity of litigation.

43. Quite similar is the context in *Mumtaz Yarud Dowla Wakf*<sup>12</sup> wherein *Rashid Wali Beg*<sup>5</sup> was reaffirmed by another two-Judge Bench. Therein also the proceedings for eviction were commenced long prior to the amendment of 2013, before the Tribunal which was never attempted to be challenged on the ground of lack of absence of jurisdiction. The defendants, despite a decree passed on 13.11.2002, continued to occupy the property in which circumstance the waqf filed an execution petition in 2014. Still later, after four years, a plea was raised on jurisdiction relying on *Faseela M*<sup>18</sup> and *Ramesh Gobindram*<sup>6</sup> which was rightly rejected by this Court. In fact, in *Mumtaz Yarud Dowla Wakf*<sup>12</sup>, the contention could have been rejected based on the dictum in *Kiran Devi*<sup>22</sup> and not necessarily raising a doubt on *Ramesh Gobindram*<sup>6</sup>. In fact, if the suit for eviction though instituted without jurisdiction before the Tribunal, at the point of time this Court ruled on it, the jurisdiction for removal of encroachment was squarely on the Tribunal, by virtue of the Amendment Act 27 of 2013. No purpose would have been served by a remand, and the litigation would have merely prolonged.

44. *Ramesh Gobindram*<sup>6</sup> as we noticed, was the first in the line of the decisions cited hereinabove wherein the question arose as to whether an eviction of a tenant can be sought for before the Tribunal constituted under Act of 1995. As we have earlier noticed with extracts from the decision, *Ramesh Gobindram*<sup>6</sup> considered exhaustively as to what is the jurisdiction conferred on the Tribunal constituted under the Act of 1995. It found that the decision on the question raised as to whether a property is a waqf property or not would be under Section 6(1) and 7(1) of the Act, confined to properties specified in the list; which list includes the list under Section 5(2) and those in the register maintained under Section 37. Section 6 (5) though provided for an ouster of jurisdiction insofar as the matters referred to in sub-section (1); it was found to be confined to such questions since there were other issues that could be raised before the Tribunal constituted under the Act, a few of which were illustrated in paragraphs 26 and 27, which we have extracted hereinabove. A more elaborate reference to the various powers is found in *Rashid Wali Beg*<sup>5</sup> as available in paragraphs 54.1 to 54.16 and 54.20. Section 85 was found to have brought a wider ouster of jurisdiction of Civil Court, due to the conferment of jurisdiction on the Tribunal by the other provisions noticed hereinabove. It was categorically held in paragraph 32 of *Ramesh Gobindram*<sup>6</sup> that Section 83 does not push the exclusion of the jurisdiction of the Civil Court beyond what has been provided in Section 6, Section 7 and Section 85 of the Act; holding thereby unequivocally that Section 83 does not by itself confer any jurisdiction on the Tribunal and even according to us, it merely enables the constitution of the Tribunal by the State.

45. *Rashid Wali Beg*<sup>5</sup> not only found that Section 83 conferred an expansive power on the Tribunal to decide every question/dispute arising with respect to a waqf or waqf property; but also held that such jurisdiction was available even before the amendment and especially so after the amendment. In the teeth of the above finding, we have to notice Section 83(1) before the amendment and after the amendment:

***Before the amendment of 2013***

*"Section 83(1): The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals."*

***After the amendment of 2013***

*"Section 83(1): The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals"*

*[underlining by us to emphasize the incorporation by amendment]*

46. We cannot but notice that the decisions of this Court in *Pritpal Singh*<sup>9</sup> and *Rashid Wali Beg*<sup>5</sup> specifically dealing with Section 83(1) extracted only the words "*for the determination of any dispute, question or other matter relating to a wakf or wakf property*" and omitted the words "*under this Act*". The wakf or wakf properties should thus be having a status under the Act which is possible only by inclusion in the '*list of auqaf*' which as of now includes a list published after a survey under Chapter II or a registration made under Chapter V. After the amendment, the words "*eviction of a tenant or determination of rights or obligations of a lessor and the lessee of such property*" was brought in between the words "*wakf or wakf properties*" and "*under the Act*". This was only an abundant clarification of the powers conferred on the Tribunal, especially that of eviction of encroachments, which power according to us was not conferred under Section 83. It is Section 54 that confers the Tribunal with the power to dislodge encroachers, brought in by the Amendment Act of 2013. The amendment also incorporated a definition clause (ee), for encroachment, under Section 3, which meant unauthorized occupation of a waqf property including such occupation after the expiry or termination of a tenancy, lease or license. The specific power conferred on the Tribunal thus was under Section 54(3) & (4) and not under Section 83(1).

47. Section 85 remained as such after the amendment of 2013 only bringing in cosmetic changes as we noticed hereinabove. Section 83 does not confer any jurisdiction on the Tribunal, either/or an omnibus consideration of any dispute, question or other matter related to waqf or of waqf property, nor with respect to eviction of a tenant or determination of the rights and obligations of lessor and lessee of waqf property. It merely enables the constitution of the Tribunal and the mere recital of what the Tribunal could do, is not an expansive conferment of power especially considering the fact that the statute confers such powers under specific provisions, yet again Section 85 restricts the ouster of jurisdiction of the Civil Court, Revenue Court or any other authority to those aspects which are required by or under that Act to be determined by the Tribunal. There is hence no absolute and all-pervasive ouster of jurisdiction of the Civil Court even under Section 85 of the Act of 1995. The definition of 'waqf' under Section 85, 3(r) and the applicability of the Act of 1995 on all auqaf (Section 2) does not also determine jurisdiction which, in resolution to disputes with respect to a property being a waqf or not

is expressly conferred on the Tribunal, only with respect to those properties specified in the '*list of Auqaf*'. This is the statutory imprimatur which cannot be deviated from by Courts of law, especially when the statute could have provided merely for all disputes with respect to auqaf to be determined by the Tribunal; which it did not.

48. We cannot but also notice that the Tribunal, though conferred with the jurisdiction to remove encroachers, the power could be invoked only by the Chief Executive Officer of the Board as per Section 54(3) & (4), either *suo motu* or on a complaint. If the power to move directly before the Tribunal was available under section 83, even prior to the amendment of 2013, there was no reason to confer jurisdiction under Section 54 and much less reason to provide specifically for removal of encroachment.

49. **We hence respectfully affirm the principle of jurisdiction conferred on the Tribunal under the Waqf Act, 1995 and the ouster of jurisdiction of the Civil Court under Section 85 of the said Act to be, as considered and declared in *Ramesh Gobindram*. There could be instances where *Ramesh Gobindram* can be distinguished insofar as the eviction of encroachers, which jurisdiction has now been specifically conferred on the Tribunal by the amendment Act of 2013. The amendment Act of 2013 removes the sub-stratum of the decision in *Ramesh Gobindram* only to the extent of the absence found, of the jurisdiction conferred on the Tribunal to remove encroachers and does not, in any other manner, interfere with the principle stated of the jurisdiction of the Tribunal under the Act of 1995 and the jurisdiction of the Civil Court having been ousted only to the extent of the specific power conferred on the Tribunal by and under the Act.**

50. Now, looking at the facts of the present case, a bare reading of the plaint would indicate that neither is the property specified in the '*list of auqaf*' as published in Chapter II nor registered under Chapter V and hence the decision as to whether the property is a waqf property or not cannot be decided by the Tribunal since the property is not one specified in the '*list of auqaf*', which is the mandatory requirement under Section 6(1) and Section 7(1) of the Waqf Act of 1995 to approach the Tribunal. We will not consider the issue as to whether the property can be deemed to be a 'waqf by user' since the question is still at large. The injunction simpliciter sought for before the Tribunal does not fall within its jurisdiction and the plaint has to be rejected, which we do, allowing the application of the defendant under Order VII, Rule 11. The order of the Tribunal, ascertaining jurisdiction and that of the High Court, affirming it are set aside."

**(emphasis supplied)**

14. Learned counsel for the petitioner has further relied upon the following judgments: -

a) **Suhas H. Pophale v. Oriental Insurance Co. Ltd.** 13, and particularly on paragraph Nos. 31, 32, 33, 34, 35, 36, 37, 38 and 39, to contend that it was held, in the said case, that the appellant therein was protected as a 'deemed tenant' under the Bombay Rent Act<sup>14</sup> before the merger of the insurance company with a government company, and the said protection continued under the Maharashtra Rent Control Act, 1999, as per the definition of 'tenant'. It was submitted that generally, legislation affecting substantive rights is prospective unless expressly made retrospective. This principle prevents altering existing rights unless the law clearly indicates such intent and the correct remedy for eviction of the appellant, protected under the State Rent Control Act, should

have been sought through the procedure under the Bombay Rent Act or its successor, not the Public Premises Act. It was submitted that the appellant's rights under the State Rent Control Act were affirmed in the said judgment.

b) **Videocon International Ltd. v. SEBI** 15, and particularly on paragraph Nos. 38 and 45, to contend that the said case focused on the principle that a right of appeal, whether absolute or limited, is a vested substantive right and the same can only be altered or curtailed by an amendment if expressly provided. It was further stated that the amendment to Section 15Z of the Securities and Exchange Board of India Act, 1992, altered the appellate forum from the High Court to the Supreme Court and limited the scope of appeal to questions of law only, thereby diminishing the appellate package available under the unamended provision. It was further submitted that the court emphasized that pending proceedings are governed by the law in force at the commencement of the dispute unless expressly provided otherwise by the amending provision. Consequently, all appeals initiated before the amendment, despite being heard post-amendment, retain the vested right to the appellate remedy available under the unamended provision, and therefore, the Court concluded that appeals filed before the amendment to Section 15Z of the said Act are maintainable in their original form and must be adjudicated accordingly.

c) **Chiraguddin v. Urmila Rani** 16 and particularly on paragraph Nos. 5, 6, 9 and 10, to contend that challenging the eviction order on the ground of effect of Amendment Act of 2013 after several years would be inequitable and contrary to the principle of estoppel as established in **Martin and Harris Ltd. v. ADJ** 17.

d) **Seth Nanak Chand Shandurain v. Tinnervelly- Tuticorin Electric Supply Company Ltd.** 18, and particularly on paragraph No.13, to contend that the said paragraph discusses Section 21 of the CPC which deals with objections to the place of suing and it emphasizes that a litigant cannot raise objections about the place of suing at the appellate or revisional stage if such objections were not raised at the earliest opportunity in the trial court, especially when issues were settled. It was further stated that the section underscores the principle that a litigant who participates in trial proceedings without pressing objections to jurisdiction effectively waives those objections and cannot subsequently challenge the judgment on those grounds. The said para highlights that failure to raise objections in a timely manner may not constitute a failure of justice.

e) **Sow Chandra Kante & Anr. v. Sheikh Habib** 19 and particularly on paragraph No. 1, to contend that the review proceedings do not amount to a re-hearing. 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.

f) **Haridas Das v. Usha Rani Banik and Ors.** 20 and particularly on paragraph Nos. 13, 14 and 15, to contend that the parameters are prescribed in Order XLVII of the 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". It is further submitted that it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning.

g) **State of West Bengal v. Kamal Sengupta, 21** and particularly on paragraph Nos. 11 and 28, to contend that a Tribunal established under the Act is entitled to review its order/decision only if either of the grounds enumerated in Order XLVII Rule 1 of the CPC is available. It was contended that this would necessarily mean that a Tribunal can review its order/decision on the discovery of new or important matter or evidence which the applicant could not produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or error apparent on the face of the record or there exists some other reason, which, in the opinion of the Tribunal, is sufficient for reviewing the earlier order/decision. It was further submitted that a decision/order cannot be reviewed under Section 22(3)(f) of the Administrative Tribunals Act, 1985, on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court. While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent and mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such 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/Tribunal earlier.

## **ANALYSIS AND FINDINGS**

15. At the very outset, it is pertinent to note that *vide* order dated 22.03.2024, learned Predecessor Bench of this Court had observed that the question involved in the present review petition is the applicability of the Waqf Amendment Act, 2013, with retrospective or prospective effect *qua* the appropriate forum, and whether this aspect can be examined in the review jurisdiction.

16. Learned Single Judge, while disposing of the captioned revision petition, with respect to question of maintainability of the eviction petition before learned ARC on the ground that post the Waqf Amendment Act, 2013 as per Section 83 of the Waqf Act, 1995, only the Waqf Tribunal had jurisdiction to deal with matters relating to eviction of a tenant of a Waqf property, and Section 85 of the said Act, bars jurisdiction of other Courts in respect of the matters which the Waqf Tribunal is empowered to decide, had observed and held as under: -

"5. At the outset, the respondent has questioned the maintainability of the eviction petition before the learned ARC on the ground that under section 83 of the Wakf Act,

1995 only the Wakf Tribunal had jurisdiction to deal with matters relating to eviction of a tenant of a Wakf property, section 85 of the said Act bars jurisdiction of other courts in respect of the matters which the Wakf Tribunal is empowered to decide, therefore, the eviction petition could not have been decided or entertained by the learned ARC. Reliance is placed by the respondent upon the following judgments: **Rashid Wali Beg vs Farid Pindari (2022) 4 SCC 414**; **Syed Amir Ali vs Anjuman-e-Maidan [CM(M) 521/2021]** decided on 02.12.2021 by High Court of Delhi; and **Mehnish Adil vs Delhi Wakf Board 2002 (286) DLT 654**.

6. Refuting the aforesaid contentions, the learned counsel for the petitioner submits that in view of the decision of the Supreme Court in **Ramesh Gobindram vs Sugra Humayun Mirza Wakf (2010) 8 SCC 726**, which while dealing with an eviction petition prior to the amendment of section 83 of the Wakf Act in November, 2013 held that an eviction petition against a Wakf property would also be maintainable before a Civil Court. In **Rashid Wali** (supra) the Supreme Court held as under:

*"....45. Interestingly, the basis of the decision in Ramesh Gobindram was removed through an amendment under Act 27 of 2013. As we have stated elsewhere, Ramesh Gobindram sought to address the question whether a Waqf Tribunal was competent to entertain and adjudicate upon disputes regarding eviction of persons in occupation of what are admittedly waqf properties. Since this Court answered the question in the negative, Section 83(1) was amended by Act 27 of 2013 to include the words,*

*"eviction of tenant or determination of rights and obligations of the lessor and lessee of such property".*"

7. However, the 2013 Amendment does not make section 83 of the Wakf Act applicable retrospectively. The eviction petition relates to 24.12.2009, i.e. more than over four years before the amendment came into effect. No notification was issued regarding transfer to the Wakf Tribunal of all cases relating to wakfs pending before the ARC under the DRC Act. Interestingly, this issue was never raised before by the tenant. On 11.02.2015, this court had remanded the matter to the learned ARC for decision on the issue of leave to defend. The said remand and direction received affirmation of the Supreme Court on 07.05.2015.

8. In view of the above, the eviction petition was maintainable before the learned ARC. The tenant's contentions to the contrary are untenable and are rejected. The respondent's reliance upon the judgments **Syed Amir Ali** (supra) and **Mehnish Adil** (supra) dealt with cases which were filed after the 2013 amendment of the Wakf Act, proceedings initiated under the Wakf Act in 2013 under Section 55 of the Wakf Act apropos directions to Sub-Divisional Magistrate for implementation of eviction orders and removal of encroachment from Wakf property. It did not relate to eviction of a tenant under the Delhi Rent Control Act."

17. In the present review petition, with regard to the aforesaid issue of retrospective effect of Waqf Amendment Act, 2013, following grounds have been urged on behalf of the respondent/applicant: -

"9. That there are errors apparent on the face of the record in the impugned judgment. The respondents seeks to review the impugned judgment on the following grounds:

xxx xxx xxx C. Because the Hon'ble court erred in not deciding the contention of the petitioner that the aforesaid amendment i.e Section 83 and 85 of the Wakf Act giving power to Wakf Tribunal to decide disputes relating to eviction of tenants would operate as a bar to the present petition as it is settled law that no person has a vested right in a

course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered, the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation. Thus, since the procedure has been altered and the power of eviction has been conferred upon the Wakf Tribunal, the present eviction petition cannot be proceeded with. The said argument was also incorporated in the Main points of Arguments filed before this Hon'ble court and was also orally argued before this Hon'ble court. The authorities titled Shiv Shakti Coop Housing Vs Swaraj Developers reported as Manu/SC/0335/2003 and Rakesh Kesharwani Vs Imam Bada Shahedaan Karbala reported as Manu/MP/1158/2023 relied upon by the respondent were not considered by the Hon'ble court while deciding the petition. Had the said contention and authority been considered by the Hon'ble court it would have been established that the eviction petition was not maintainable before the Ld Rent Controller after the amendment to Wakf Act.

xxx xxx xxx F. Because the Hon'ble court erred in not even referring to the binding precedent of Shiv Shakti Coop Housing Vs Swaraj Developers reported as Manu/SC/0335/2003 of the Hon'ble Supreme Court holding that procedural amendments are retrospective in nature and judgment of Rakesh Kesharwani Vs Imam Bada Shahedaan Karbala reported as Manu/MP/1 158/2023 wherein it was held that aforesaid amendments to Wakf Act are retrospective in nature. Thus, there is an error apparent on the face of record as the aforesaid binding precedents were not considered while passing the impugned judgment."

18. At this stage, it is apposite to refer to judicial precedent with respect to the grounds for review under Order XLVII Rule 1 of the CPC, and the scope and ambit of the Court's power under this provision as has been summarised in **Shri Ram Sahu (Dead) Through Legal Representatives And Others v. Vinod Kumar Rawat And Others**<sup>22</sup>, wherein it has been observed and held as under:

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"7. While considering the aforesaid question, the scope and ambit of the Court's power under Section 114 read with Order 47 Rule 1CPC is required to be considered and for that few decisions of this Court are required to be referred to.

7.1. In *Haridas Das v. Usha Rani Banik* [*Haridas Das v. Usha Rani Banik*, (2006) 4 SCC 78] while considering the scope and ambit of Section 114CPC read with Order 47 Rule 1CPC it is observed and held in paras 14 to 18 as under : (SCC pp. 83-84)

"14. In *Meera Bhanja v. Nirmala Kumari Choudhury* [*Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170] it was held that : (SCC pp. 172-73, para 8)

'8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court in *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [*Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, (1979) 4 SCC 389] speaking through Chinnappa Reddy, J. has made the following pertinent observations : (SCC p. 390, para 3)

"3. ... It is true ... there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. 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.” ’

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15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought : (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

16. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [*Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, (1979) 4 SCC 389] , this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under : (SCC p. 390, para 3)

‘3. It is true as observed by this Court in *Shivdev Singh v. State of Punjab* [*Shivdev Singh v. State of Punjab*, AIR 1963 SC 1909] there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. 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.’

17. The judgment in *Aribam case* [*Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, (1979) 4 SCC 389] has been followed in *Meera Bhanja* [*Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170] . In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* [*Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale*, AIR 1960 SC 137] were also noted : (AIR pp. 141-42, para 17)

‘17. ... 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.'

18. It is also pertinent to mention the observations of this Court in *Parsion Devi v. Sumitri Devi* [*Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715] . Relying upon the judgments in *Aribam* [*Aribam Tuleswar Sharma v. Aribam Pishak Sharma*, (1979) 4 SCC 389] and *Meera Bhanja* [*Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170] it was observed as under : (SCC p. 719, para 9)

'9. Under Order 47 Rule 1CPC 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 1CPC. In exercise of the jurisdiction under Order 47 Rule 1CPC 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'.' "

7.2. In *Lily Thomas v. Union of India* [*Lily Thomas v. Union of India*, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056] , it is observed and held that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed in the said decision that the words

"any other sufficient reason" appearing in Order 47 Rule 1CPC must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in *Chhajju Ram v. Neki* [*Chhajju Ram v. Neki*, 1922 SCC OnLine PC 11 : (1921-22) 49 IA 144 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius* [*Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius*, AIR 1954 SC 526] .

7.3. In *Inderchand Jain v. Motilal* [*Inderchand Jain v. Motilal*, (2009) 14 SCC 663 : (2009) 5 SCC (Civ) 461] in paras 7 to 11 it is observed and held as under : (SCC pp. 668-69)

"7. Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a civil court and consequently by the appellate courts. The words "subject as aforesaid" occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under : (*Kamal Sengupta case* [*State of W.B. v. Kamal Sengupta*, (2008) 8 SCC 612 : (2008) 2 SCC (L&S) 735] , SCC p. 631, para 17)

'17. The power of a civil court to review its judgment/decision is traceable in Section 114CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1CPC, 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, may apply for a review of judgment of the court which passed the decree or made the order.”

8. An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In *Rajender Kumar v. Rambhai* [*Rajender Kumar v. Rambhai*, (2007) 15 SCC 513 : (2010) 3 SCC (Cri) 584] this Court held : (SCC p. 514, para 6)

‘6. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.’

9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.

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.

11. Review is not appeal in disguise. In *Lily Thomas v. Union of India* [*Lily Thomas v. Union of India*, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056] this Court held : (SCC p. 251, para 56)

‘56. It follows, therefore, that the power of review can be exercised for correction of a mistake but 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 like an appeal in disguise.’ ”

8. The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or improvement”. It cannot be denied that the review is the creation of a statute. In *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* [*Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844] , this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

9. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by this Court in *T.C. Basappa v. T. Nagappa* [*T.C. Basappa v. T. Nagappa*, AIR 1954 SC 440] . It is held that such an error is an error which is a patent error and not a mere wrong decision. In *Hari Vishnu Kamath v. Syed Ahmad Ishaque* [*Hari Vishnu Kamath v. Syed Ahmad Ishaque*, (1955) 1 SCR 1104 : AIR 1955 SC 233] , it is observed as under : (SCC p. 244,

para 23)

"23. ... It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? The learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated."

9.1. In *Parsion Devi v. Sumitri Devi* [*Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715] in paras 7 to 9 it is observed and held as under : (SCC pp. 718-19)

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1CPC. In *Thungabhadra Industries Ltd. v. State of A.P.* [ *Thungabhadra Industries Ltd. v. State of A.P.*, AIR 1964 SC 1372] this Court opined : (AIR p. 1377, para 11)

'11. 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. Similarly, even if the statement was wrong, it would not follow that it 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 characterised as vitiated by 'error apparent'. *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.*'

8. Again, in *Meera Bhanja v. Nirmala Kumari Choudhury* [*Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170] while quoting with approval a passage from *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [*Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, (1979) 4 SCC 389] 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 1CPC.

9. Under Order 47 Rule 1CPC 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 1CPC. In exercise of **the** jurisdiction under Order 47 Rule 1CPC 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".

(emphasis in original)

9.2. In *State of W.B. v. Kamal Sengupta* [*State of W.B. v. Kamal Sengupta*, (2008) 8 SCC 612 : (2008) 2 SCC (L&S) 735] , this Court had an occasion to consider what can be said to be "mistake or error apparent on the face of record". In paras 22 to 35 it is observed and held as under : (SCC pp. 633-38)

"22. 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 1CPC 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.

23. We may now notice some of the judicial precedents in which Section 114 read with Order 47 Rule 1CPC and/or Section 22(3)(f) of the Act have been interpreted and limitations on the power of the civil court/tribunal to review its judgment/decision have been identified.

24. In *Kotagiri Venkata Subbamma Rao v. Vellanki Venkatarama Rao* [*Kotagiri Venkata Subbamma Rao v. Vellanki Venkatarama Rao*, 1900 SCC OnLine PC 12 : (1899-1900) 27 IA 197] the Privy Council interpreted Sections 206 and 623 of the Civil Procedure Code and observed : (SCC OnLine PC : IA p. 205)

'... Section 623 enables any of the parties to apply for a review of any decree on the discovery of new and important matter and evidence, which was not within his knowledge, or could not be produced by him at the time the decree was passed, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. It is not necessary to decide in this case whether the latter words should be confined to reasons strictly ejusdem generic with those enumerated, as was held in *Roy Meghraj v. Beejoy Gobind Burrall* [*Roy Meghraj v. Beejoy Gobind Burrall*, ILR (1875) 1 Cal 197] . *In the opinion of their Lordships, the ground of amendment must at any rate be something which existed at the date of the decree, and the section does not authorise the review of a decree which was right when it was made on the ground of the happening of some subsequent event.*'

25. In *Hari Sankar Pal v. Anath Nath Mitter* [*Hari Sankar Pal v. Anath Nath Mitter*, 1949 SCC OnLine FC 4 : (1949-50) 11 FCR 36] a five-Judge Bench of the Federal Court while considering the question whether the Calcutta High Court was justified in not granting relief to non-appealing party, whose position was similar to that of the successful appellant, held : (SCC OnLine FC : FCR p. 48)

'That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without adverting to or applying its mind to a *provision of law* which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order 47 Rule 1 of the Civil Procedure Code.'

26. In *Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius* [*Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius*, AIR 1954 SC 526] this Court interpreted the provisions contained in the Travancore Code of Civil Procedure which are analogous to Order 47 Rule 1 and observed : (AIR p. 538, para 32)

'32. ... 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, least analogous to those specified in the rule".'

27. In *Thungabhadra Industries Ltd. v. State of A.P.* [*Thungabhadra Industries Ltd. v. State of A.P.*, AIR 1964 SC 1372] it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected.

28. In *Parsion Devi v. Sumitri Devi* [*Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715] it was held as under : (SCC p. 716)

'Under Order 47 Rule 1CPC 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 1CPC.* In exercise of the jurisdiction under Order 47 Rule 1CPC it is not permissible for an erroneous decision to be "reheard and corrected". *There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".'*

29. In *Haridas Das v. Usha Rani Banik* [*Haridas Das v. Usha Rani Banik*, (2006) 4 SCC 78] this Court made a reference to the Explanation added to Order 47 by the Code of Civil Procedure (Amendment) Act, 1976 and held : (SCC p. 82, para 13)

'13. In order to appreciate the scope of a review, Section 114CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it 'may make such order thereon as it thinks fit'. The parameters are prescribed in Order 47CPC 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. This is amply evident from the Explanation to Rule 1 of Order 47 which states that 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. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection.'

30. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [*Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, (1979) 4 SCC 389] this Court considered the scope of the High Courts' power to review an order passed under Article 226 of the Constitution, referred to an earlier decision in *Shivdev Singh v. State of Punjab* [*Shivdev Singh v. State of Punjab*, AIR 1963 SC 1909] and observed : (*Aribam Tuleshwar case* [*Aribam Tuleshwar Sharma*

*v. Aribam Pishak Sharma*, (1979) 4 SCC 389] , SCC p. 390, para 3)

'3. ... It is true as observed by this Court in *Shivdev Singh v. State of Punjab* [*Shivdev Singh v. State of Punjab*, AIR 1963 SC 1909] , there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. 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.'

31. In *K. Ajit Babu v. Union of India* [*K. Ajit Babu v. Union of India*, (1997) 6 SCC 473 : 1997 SCC (L&S) 1520] , it was held that even though Order 47 Rule 1 is strictly not applicable to the tribunals, the principles contained therein have to be extended to them, else there would be no limitation on the power of review and there would be no certainty or finality of a decision. A slightly different view was expressed in *Gopabandhu Biswal v. Krishna Chandra Mohanty* [*Gopabandhu Biswal v. Krishna Chandra Mohanty*, (1998) 4 SCC 447 : 1998 SCC (L&S) 1147] . In that case it was held that the power of review granted to the tribunals is similar to the power of a civil court under Order 47 Rule 1.

32. In *Ajit Kumar Rath v. State of Orissa* [*Ajit Kumar Rath v. State of Orissa*, (1999) 9 SCC 596 : 2000 SCC (L&S) 192] , this Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a civil court and held : (SCC p. 608, paras 30-31)

'30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. *It may be pointed out that the expression 'any other sufficient reason' used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the Rule.*

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.'

33. In *State of Haryana v. M.P. Mohla* [*State of Haryana v. M.P. Mohla*, (2007) 1 SCC 457 : (2007) 1 SCC (L&S) 303] this Court held as under : (SCC pp. 465-66, para 27)

'27. A review petition filed by the appellants herein was not maintainable. There was no error apparent on the face of the record. The effect of a judgment may have to be

considered afresh in a separate proceeding having regard to the subsequent cause of action which might have arisen but the same by itself may not be a ground for filing an application for review.'

34. *Gopal Singh v. State Cadre Forest Officers' Assn.* [*Gopal Singh v. State Cadre Forest Officers' Assn.*, (2007) 9 SCC 369 : (2007) 2 SCC (L&S) 819] this Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below : (SCC p. 387, para 40)

'40. The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Sinha, J.) that the Tribunal has travelled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect.'

35. The principles which can be culled out from the abovenoted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such 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/tribunal earlier."

10. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the court, which may order or pass the decree. From the bare reading of

Section 114CPC, it appears that the said substantive power of review under Section 114CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said section imposed any prohibition on the court for exercising its power to review its decision. However, an order can be reviewed by a court only on the prescribed grounds mentioned in Order 47 Rule 1CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power be exercised in the guise of power of review.”

(underline supplied)

19. Learned Single Judge of this Court, while disposing of the captioned petition *vide* judgment dated 07.07.2023, had observed that eviction petition was maintainable before the learned ARC, and respondent/tenant’s contentions to the contrary were held untenable and were rejected.

20. The respondent/tenant is seeking review of the said judgment dated 07.07.2023 and rectification of the aforesaid alleged error on the face of the record with respect to the decision holding that there will be no retrospective applicability of the Wakf Amendment Act, 2013, *qua* the appropriate forum. As per the judgment of the Hon’ble Supreme Court in **Shri Ram Sahu (Dead) (supra)**, this Court’s review jurisdiction cannot be exercised on the ground that the observation/opinion rendered by learned Single Judge of this Court in judgment dated 07.07.2023 was erroneous on merits. Said decision ought to have been assailed by the respondent/review applicant before Hon’ble Supreme Court by taking recourse to appropriate remedy available to him as permissible in law. The contention of the learned Senior Counsel for the respondent that the Waqf Amendment Act, 2013, is applicable retrospectively and the said decision ought to be corrected, as the same suffers from an error apparent on the face of the record, in exercise of review jurisdiction is untenable. Whether the decision of learned Single Judge is erroneous in law or that a different view could have been taken by the Court on the point of law will not be amenable to review jurisdiction. This Court while exercising the power of review cannot sit in appeal over the judgment/decision rendered by learned Single Judge of this Court.

21. Perusal of the record demonstrates that the judgments, *i.e.*, **Shiv Shakti Coop. Housing Society v. Swaraj Developers<sup>23</sup>**, and **Rakesh Kesharwani v. Imam Bada Shahedaan Karbala<sup>24</sup>**, based on which the review of the judgment dated 07.07.2023 has been sought, were not placed on record prior to the pronouncement of judgment under review. The said judgments are not on record of the present petition. Moreover, even if, the said judgments were referred to during the course of oral arguments and not considered, then same can be a ground to challenge the same, but not for purpose of review.

22. The judgment under review dated 07.07.2023 rendered by learned Single Judge shows that judgments of Hon’ble Supreme Court in **Rashid Wali Beg v. Farid Pindari<sup>25</sup>**, and **Ramesh Gobindram v. Sugra Humayun Mirza Wakf, <sup>26</sup>** were referred to by learned Single Judge which were relied on the respective

parties.

23. Insofar as the other judgments relied upon by the learned Senior Counsel for the respondent/applicant are concerned, the same are distinguishable from the present case: -

a) In **Simplex Infrastructure (supra)**, the Hon'ble Division Bench of this Court was dealing with a review on the ground that at the time when the Court passed the order therein, it did not have jurisdiction to entertain and hear the petition under Section 9 of the Arbitration and Conciliation Act, 1996<sup>27</sup>, and therefore, there was an error apparent on the face of the record. It is an admitted position of fact, in the said case, that as Parliament was not in session and urgent steps were needed to be taken, therefore, Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015, was promulgated on 23.10.2015. In the said case, after passing of the order under review, Section 10(2) of the Commercial Courts Act was enacted and replaced on 31.12.2015 with retrospective effect w.e.f. 23.10.2015, i.e., from the date on which Ordinance of 2015 pertaining to the Commercial Courts Act was promulgated. As per enacted and replaced Section 10(2) of the Commercial Courts Act, all applications under Section 9 of the A&C Act are to be heard by a learned Single Judge, i.e., Commercial Division, and not by a Division Bench, i.e., the Commercial Appellate Division. It was in such circumstances, learned Division Bench therein held that when the order on 10.12.2015 in the petitioner's application under Section 9 of the A&C Act, Division Bench lacked jurisdiction to entertain such an application. However, in the present case, issue of the applicability of the Waqf Amendment Act, 2013, with retrospective effect *qua* the appropriate forum had not been determined/settled while the judgment under review was rendered by learned Single Judge. It was a view taken by the learned Single Judge which could have been challenged.

b) In **Selection Committee for Admission v. MP Nagraj (supra)**, the Hon'ble High Court of Mysore was dealing with the question that,

*"Does overlooking a binding decision constitute a ground for reviewing a judgment or order of a Court?"* Review in said case was sought on the ground that in the writ petition, the Court had overlooked a binding decision of Hon'ble Supreme Court rendered prior in time to the passing of the judgment under review, and same was not brought to the notice of the Court by either of the parties. However, in the present case, there was no binding precedent/judgment passed by the Hon'ble Supreme Court *qua* the retrospective effect of Waqf Amendment Act, 2013, and the relevant binding precedent prevailing then and relied on by the parties were duly referred to by learned Single Judge in the judgment under review.

c) In **Board of Control for Cricket, India & Ors. (supra)**, an undertaking was given on behalf of the Board, and learned Division Bench before whom such undertaking was given was of the opinion that it was misled by the same. The Hon'ble Supreme Court observed that in a case of this nature where the High Court had accepted its own mistake in understanding the nature and purport of

the undertaking given by the appellant-Board and its correlation with the events in the AGM, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake. In these circumstances, it was observed that the jurisdiction of the High Court in entertaining a review application cannot be said to be *ex facie* bad in law.

d) In **M.M. Thomas v. State of Kerala (*supra*)**, the Hon'ble Supreme Court was dealing with following questions: -

"K.T. Thomas, J.— Two questions are mooted in this appeal filed by special leave. First is whether the power to review a decision rendered under the Kerala Private Forests (Vesting and Assignment) Act, 1971 (for short "the Act") could have been exercised in the absence of any of the conditions specified in Section 8-C of the Act. The second question — which has sprouted as ancillary to the first question — is whether the High Court has (dehors the said provision) power to review its own decision rendered in appeal filed under the Act. If both questions are answered in the negative the appellant can succeed in getting the impugned order (of a Division Bench of the High Court of Kerala) annulled in his favour. Otherwise the impugned order will remain undisturbed."

While dealing with aforesaid questions, the Hon'ble Supreme Court observed and held as under: -

"13. In this case we are not concerned with the power of review of the Forest Tribunal. It was the High Court which reviewed its own judgment and so the question is whether the High Court has such power dehors Section 8-C(2) of the Act. Power of review conferred on the Supreme Court under Article 135 of the Constitution is not specifically made applicable to the High Courts. Does it mean that the High Court has no power to correct its own orders, even if the High Court is satisfied that there is error apparent on the face of the record?

14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In *Naresh Shridhar Mirajkar v. State of Maharashtra* [AIR 1967 SC 1 : (1966) 3 SCR 744] a nine-Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record."

The aforesaid proposition of law laid down by the Hon'ble Supreme Court is not disputed; however, the power of review vested with this Court has to be exercised in terms of the ingredients/pre-requisites of Section 114 and Order XLVII of the CPC and the precedents of the Hon'ble Supreme Court providing for the circumstances in which such power can be exercised.

e) With respect to the judgment of Hon'ble Supreme Court in **Mumtaz Yarud Dowla Waqf<sup>28</sup> (*supra*)**, suffice it to note that the said decision was rendered after passing of the judgment (dated 07.07.2023) under review.

24. It is pertinent to note, at this stage, that the judgment by Two Judges' Bench of the Hon'ble Supreme Court in **Rashid Wali Beg<sup>29</sup> (supra)** did not consider the retrospective or prospective effect of the Waqf Amendment Act, 2013. As noted hereinbefore, the issue of retrospective effect was dealt by Two Judges' Bench of Hon'ble Supreme Court in **Mumtaz Yarud Dowla Waqf (supra)** wherein again after noting various precedents on the subject with respect to retrospectivity as well as applicability of Waqf Amendment Act, 2013, it was held that the said amendment is a procedural amendment and has to be applied retrospectively. However, subsequently in **Habib Alladin (supra)**, regarding the effect of Waqf Amendment Act, 2013, the Hon'ble Supreme Court was of the considered opinion that the same was by way of substitution, and therefore, clarificatory in nature. This was, in view of the fact that, subsequently, the learned Bench held that even after the Waqf Amendment Act of 2013 the position in law would remain the same, which was held in **Ramesh Gobindram (supra)**. It was held that the Amendment Act of 2013 would only confer the jurisdiction on the Waqf Tribunal to remove encroachers. Thus, the judgment rendered by the Two Judges' Bench in **Habib Alladin & Ors. (supra)** is, in effect, contrary to the judgments rendered by co-equal strength of Benches in **Rashid Wali Beg (supra)** and **Mumtaz Yarud Dowla Waqf (supra)** with respect to effect of Waqf Amendment Act, 2013.

25. As observed by the Hon'ble Supreme Court in **Shri Ram Sahu (Dead) Through Legal Representatives And Others (supra)**, for a Court to exercise the power of review on the ground of "*error apparent on the face of record*", the error must be of such a nature which "*may strike one on a mere looking at the record and would not require any long-drawn process of reasoning*". In the present case, the effect of the Waqf Amendment (Act No. 27), 2013, whether retrospective or prospective *qua* the appropriate forum was not determined or pronounced by way of a definite judicial precedent when the judgment under review was passed by learned Single Judge of this Court on 07.07.2023. Subsequent to the passing of said decision, as noted hereinbefore, Two Judges' Bench of Hon'ble Supreme Court in **Habib Alladin & Ors. (supra)** has given a contrary opinion to the judgments rendered by co-equal strength of Benches in **Rashid Wali Beg (supra)** and **Mumtaz Yarud Dowla Waqf (supra)** with respect to effect of Waqf Amendment Act, 2013. Thus, the opinion of learned Single Judge in judgment under review that the Waqf Amendment Act, 2013, was prospective and such Amendment does not make Section 83 of the Waqf Act applicable retrospectively, cannot be said to be a self-evident error apparent on the face of the record. The same has been attempted to be established by learned Senior Counsel for the respondent/applicant by relying on various judicial precedents. This requires judicial interpretation and would, as such, amount to this Court exercising appellate jurisdiction over the judgment under review rendered by learned Single Judge. Such an exercise is not permissible in the present review jurisdiction.

26. In view of the aforesaid, in the considered opinion of this Court, no grounds

for review of judgment dated 07.07.2023 are made out.

27. The present review petition is accordingly dismissed and disposed of.

28. The order dated 08.01.2024 passed by learned Predecessor Bench with respect to non-initiation of the execution proceedings/petition stands vacated. Petitioner will be at liberty to initiate appropriate execution proceedings in accordance with law.

29. Insofar as the interim order dated 15.01.2026, as amended on 06.02.2026, directing the respondent to pay a sum of Rs.50,000/- per month, *as an ad-interim measure*, to the petitioner/landlord from 08.01.2024 is concerned, the respondent shall pay the said amount to the petitioner till today, *i.e.*, 03.08.2026, along with arrears, if any. Further proceedings regarding the payment of use and occupation charges can be dealt with by the concerned learned Execution Court in accordance with law.

30. In view of the aforesaid, application, **CM APPL. 35407/2025**, filed on behalf of the petitioner/applicant for payment of use and occupation charges at the market rate for the demised premises, stands disposed of.

31. Pending applications, if any, also stand disposed of accordingly.

32. Judgment be uploaded on the website of this Court, *forthwith*.

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#### FOOTNOTES

1. For short, 'CPC'
2. *Vide* 'The Waqf (Amendment) Act, 2013 (Act No.27 of 2013)', hereinafter referred to as "Waqf Amendment Act, 2013"
3. (2022) 2 SCC 161
4. (2003) 6 SCC 659
5. 2023 SCC OnLine SC 1378
6. (2006) 1 SCC 141
7. MANU/DE/1947/2017
8. MANU/KA/0043/1972
9. MANU/SC/0019/2005
10. (2000)1 SCC 666
11. MANU/MP/1158/2023
12. 2026 SCC OnLine SC 119
13. MANU/KA/0043/1972
14. Bombay Rents, Hotel and Lodging House Rates Control Act, 1947
15. (2015) 4 SCC 33
16. 2014 SCC OnLine Del 4703
17. (1998) 1 SCC 732
18. 1974 SCC OnLine Mad 12
19. (1975) 1 SCC 674
20. (2006) 4 SCC 78
21. (2008) 8 SCC 612

22. **(2020) 13 SCC 1**
23. **(2003) 6 SCC 659**
24. **Manu/MP/1158/2023**
25. **(2022) 4 SCC 414**
26. **(2010) 8 SCC 726**
27. **For short, 'A&C Act'**
28. **2023 SCC OnLine SC 1378**
29. **(2022) 4 SCC 414: 2021 SCC OnLine SC 1003**