

(2016) 09 AHC CK 0216

In the Allahabad High Court

Case No : Civil Misc. Review Application No. 46070 of 2013 In Writ A. No. 22127 of 2010.

Prabhakar Shukla and another - Petitioners @HASH State of U.P. and Others

Date of Decision : 08-09-2016

Acts Referred:

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

Citation : (2017) 3 ADJ 694 : (2017) 121 ALR 356 : (2016) 3 ARC 486

Hon'ble Judges : Sudhir Agarwal and Dr. Kaushal Jayendra Thaker, JJ.

Bench : Division Bench

Advocate : Radha Kant Ojha, Deepak Kumar Jaiswal, Manuvalkya Upadhyaya, P.K. Jaiswal, Rajeev Misra, S.K. Singh and S.K. Singh Paliwal, Advocates, for the Petitioner; C.S.C., H.P. Dube, Pushpendra Singh, Rishi Kant Singh, S.C. and V.P. Varshney, Advocates, for the Re

Final Decision : Dismissed

Judgement

Sudhir Agarwal and Dr. Kaushal Jayendra Thaker, JJ.- This is an application seeking review of order dated 29.01.2013 passed by Hon''ble Rajiv Sharma and Hon''ble Satyendra Singh Chauhan, J.J. Since Hon''ble Judges are not available, hence this Review Application has come up before this Court.

2. Heard learned counsels for parties and perused the record.

3. The grounds taken in the Review Application as also arguments advanced show that review-applicant wants to re-argue the matter which is not permissible in the garb of review.

4. An application for review cannot be treated to be an opportunity to argue the case on merits afresh. In the garb of a review application reargument on merits of the case cannot be allowed.

5. In *Thungabhadra Industries Ltd. v. The Government of Andhra Pradesh* AIR 1964 SC 1372 the Court said:

"A review is by no means an appeal in disguise whereby an erroneous decision is

reheard and corrected, but lies only for patent error."

6. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* 1979 (4) SCC 389 the Court said:

"... 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."

7. Again, in *Meera Bhanja v. Nirmala Kumari Choudhury* AIR 1995 SC 455 while quoting with approval the above passage from *Abhiram Tuleshwar Sharma v. Abhiram Pishak Sharma* (supra), the Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 CPC.

8. In *Parsion Devi and others v. Sumitri Devi and others* 1997 (8) SCC 715 it was held that an error, which is not self evident and has to be detected by process of reasoning, can hardly be said to be error apparent on the face of the record justifying the court to exercise powers of review in exercise of review jurisdiction.

9. In *Rajendra Kumar v. Rambai*, AIR 2003 SC 2095, the Apex Court has observed about limited scope of judicial intervention at the time of review of the judgment and said:

"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 judgement/order cannot be disturbed."

10. Thus, Review is not an appeal in disguise. Rehearing of the matter is impermissible in the garb of review. It is an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. In *Lily Thomas v. Union of India* AIR 2000 SC 1650, the Court said that power of review can be exercised for correction of a mistake and not to substitute a new. Such powers can be exercised within limits of the statute dealing with the exercise of power. The aforesaid view is reiterated in *Inderchand Jain v. Motilal* (2009) 4 SCC

665.

11. In *Kamlesh Verma v. Mayawati and others* 2013 (8) SCC 320, the Court said:

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the Principles:

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

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

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in *Chhajju Ram v. Neki*, AIR 1922 PC 112 and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius and Ors.*, AIR 1954 SC 526, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese and Iron Ores Ltd. and Ors.*, 2013 (8) SCC 337.

22.2. When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

(emphasis supplied)

12. In the case in hand, since no ground for review, as above, is made out, the review petition is dismissed.