

**(2006) 04 DEL CK 0053**

**In the Delhi High Court**

**Case No :** Review Petition No. 387 of 2004 in R.F.A. No. 188 of 1982

Shri Sudhir Kumar Gupta

APPELLANT

Vs

Dr. Inder Chand Jain

RESPONDENT

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**Date of Decision :** 28-04-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 25, Order 41 Rule 27, Order 47 Rule 1

**Citation :** AIR 2006 Delhi 346 : (2006) 90 DRJ 108

**Hon'ble Judges :** Gita Mittal, J;Dr. M.K. Sharma, J

**Bench :** Division Bench

**Advocate :** Navneet Mishra, for the Appellant; Ravinder Sethi and Rajiv Kumar, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Gita Mittal, J.—By this order we propose to decide this application filed by the respondent whereby review of the order dated 28th September, 2004 passed by us has been sought. According to the respondent applicant, as the appellant failed to file duly corrected paper books, the present appeal was dismissed for non-prosecution by an order passed on 6th May, 2002. The order passed by this Court was assailed by the appellant before the Supreme Court which had passed the conditional order dated 24th March, 2003 directing restoration of the appeal on the appellant's filing requisite number of paper books duly corrected in the High Court within four weeks from today. Shorn of unnecessary detail, the application states that the appellant has filed incomplete, incorrect and defective paper books and has failed to comply with the order of the Supreme Court. Even defects pointed out by the Registry have not been removed and consequently the appeal deserves to be dismissed in terms of the orders passed by this Court. It is further pointed out that this Court by an order dated 25th May, 2004 granted time to the appellant to complete the paper books as directed by the Supreme Court and also to remove the objections raised by the Registry by its letter dated 20th September, 2003. This court had directed that in case the appellant failed to

comply with this order and direction, the appeal would automatically stand dismissed. For this reason as well, it is contended that the appeal stands automatically dismissed and for this reason, the order dated 28th September, 2004 recording that the appellant had complied with the order of the Apex Court and filed complete paper books is contrary to the record and consequently requires to be reviewed.

2. The appellant has filed a reply and has contested this application on every submission therein contained.

3. We have heard learned Counsel for the parties at great length. Both parties have also filed written submissions in support of their respective contentions and placed strong reliance on the record of the instant case though have urged a different construction thereon. Therefore, it becomes necessary to examine the proceedings before this Court in some detail.

4. Aggrieved by a decree for specific performance of an agreement to sell the immovable property bearing No. 1, Kasturba Gandhi Marg, New Delhi dated 29th April, 1982, the appellant filed the present appeal before this Court. The same was admitted to hearing on 5th July, 1982 with the direction to the appellant to file the paper book as per rules.

5. So far as the rules applicable for filing of the paper book are concerned, the same are to be found in Chapter 2 of the Delhi High Court Rules which relates to preparation of the record while Part A sets out the manner in which preparation of the records and first appeal is to take place. In the instant case, this Court is concerned with filing of paper books relating to an appeal from a decree. The relevant extracts of the rules in this behalf deserve to be reproduced in extenso and are set out hereunder:

2. Cyclostyling of records in First Appeals from decree- In first appeals from decrees admitted to a hearing, a cyclostyled record shall, unless special orders are given to the contrary, be prepared and filed by the appellant(s) within three months of the date of admission of appeal in accordance with the instructions hereinafter contained.

2A. If the appellant fails to prepare and file the cyclostyled record within the prescribed time, the respondent shall have right to file the same, at the expense of the appellant after due notice to the appellant. The respondent shall have a right to file, at his cost, ten cyclostyled copies of additional record which he may like to be referred to at the hearing of the appeal within one month of the service of notice of appeal on him and in case where by a special order of the Court cyclostyling of records has been dispensed with six typed paper books of the additional record.

3. Contents of cyclostyled record- (1) In the absence of special order, the cyclostyled record under Rule 2 shall consist of ....

(i) (a) the plaint and pleas,

(b) Documents either referred to in the plaint as forming the basis of the suit or considered by the court in its judgment, or duly proved by either of the parties in Court. Documents in the vernacular will be translated into and cyclostyled in English.

(ii) The autograph record of the Court, translated into English, if in vernacular.

(iii) The report of the local Commissioner, if any, appointed under Order XXVI of the Civil Procedure Code, translated into English, if in vernacular. With the report, should be cyclostyled and statements of the parties recorded before the Commissioner and tabular statements prepared by him, if they form an integral portion of his report.

(iv) Evidence taken on commissioner under Order XXVI of the Civil Procedure Code, translated into English, if in vernacular.

(v) The grounds of appeal to the High Court, in English.

(vi) The order of the Judge or Bench admitted the appeal.

2. The Court may, however, dispense with the inclusion of any document or translation of any document from being included in the paper book.

5. Case in which record not cyclostyled may be referred to at the hearing- Any part of the record not cyclostyled under Rule 3 may be referred to at the hearing with the permission of the Court, but no party shall have a right to refer, during the hearing, to any document not cyclostyled:

Provided that extracts from Revenue Records need not be cyclostyled in extenso. The parties may refer to the original record for such extracts, maps and plans.

6. Checking of cyclostyled record and cost of checking- (1) The Registry shall, as soon as the record in a First Appeal has been received, check the cyclostyled record filed by the parties and send a notice to the party concerned notifying its correctness or, as the case may be, pointing out discrepancy to be rectified within the time specified in the notice.

12. Number of copies cyclostyled record- Such number of copies of the record shall be cyclostyled as the Court may, by general rule in this behalf or by special order in any particular case direct.

18. Supplementary cyclostyled record- (1) When an order has been made by a division or Full Bench, under Order XLI, Rule 25 or Rule 27 of the Code of Civil Procedure, in an appeal to which these rules have been applied, and additional evidence has been taken in pursuance of such order, a Judge may, at any time after completion of the records of the enquiry, make an order that a supplementary cyclostyled record be prepared and filed of.

(i) the order made under Order XLI, Rule 25 or Rule 27, of the Code of Civil Procedure, and

(ii) the proceedings taken there under or any part thereof.

(2) The order shall direct by which party or parties the expense of preparing the supplementary record of any part thereof Registrar shall deal with the matter under the foregoing rules so far as applicable.

6. In the instant case, the appellant failed to file paper book for almost 20 years. Therefore, on the 6th May, 2002 this Court noticed their default and dismissed the appeal of the appellant for non-prosecution.

7. The order of this Court was assailed by the appellant by a special leave petition. By an order dated 24th March, 2003, the Supreme Court granted the appeal conditionally on the following terms:

Leave granted.

Heard learned Counsel for the parties.

In facts and circumstances of the case, the order dated 6th May, 2002 passed in R.F.A. No. 188/1982 is set aside and the said appeal is restored to its original file on appellants' filing requisite number of paper books duly corrected in the High Court within four weeks from today.

The appeal is allowed.

Let hearing of the appeal by the High Court be expedited.

8. From a perusal of the record of this case, it appears that the appellant had actually filed 10 paper books in the registry of this Court in August, 1991. Registry had issued a letter dated 7th August, 2000 to learned Counsel for the appellant informing him that the paper books filed were examined and were lying under objection and that the same may be collected and refiled within a week of the receipt of the letter. In continuation of this letter, a further letter dated 9th January, 2001 was written as reminder to counsel for the appellant requiring him to collect the paper book for removal of the objection.

9. It is also noteworthy that the lower court record was also not received in this matter. It is only by letter Nos. 8722-X dated 30th April, 2003 and 10566-X dated 21st May, 2003 sent by the registry that the trial court was requested to forward the record of the case. It is noteworthy that even scrutiny of the paper book filed by the party before the registry requires availability of the lower court record in as much as the correctness thereof has to be verified by the registry by comparison with the documents on the trial court record.

10. On the 19th April, 2003, the learned Counsel for the appellant addressed the following letter to the Registrar of this Court which accompanied the paper books which was filed along with it.

The above appeal was dismissed by this Court for non-prosecution.

The appellant preferred an appeal against the order of the High Court before the

Hon"ble Supreme Court vide SLP No. 19919 of 2002-Smt. Pushpa Gupta and Anr. v. Dr. Inder Chand Jain and Ors.

The matter was heard by the Supreme Court in Court No. 10 at item No. 42 on 24.3.2003. The Supreme Court allowed the appeal and restored the above case to its original position with directions to the appellant to file the corrected paper books within four weeks from 24.3.2003 i.e. by 24.4.2003.

In compliance with the Supreme Court order the appellant's are filing the paper books herewith.

The certified copy of the order dtd 24/3/2003 has been applied for and as and when the same is made available, I undertake to file the same.

11. It is Therefore evident that the petitioner complied with the order of the Apex Court so far as the filing of the paper book within the time frame is concerned.

12. The record shows that the Registry, however took substantial time in scrutinising the same and addressed a letter only on 20th September, 2003 to counsel for the petitioner pointing out certain objections and deficiencies. This letter directed the appellant to "file duly collected paper book after removing the above said objections in this Court within four weeks of the receipt of the matter so that this matter can be expedited and the appeal be placed before the court for regular hearing".

13. Counsel for the appellant made detailed submissions running into four pages dated 24th October, 2003 which are available on record so far as the objections raised in the Registry are concerned. It was pointed out that the objections of the registry related to documents which were not part of pleadings nor of evidence in the case on merit and also pointed out that other objections were without any basis and justification and clarified the doubts of the registry in respect thereof.

14. From the record, it seems that the registry was satisfied with the Explanations and submissions rendered by the appellant in its communication dated 24th October, 2003 and consequently no further steps were taken by it with regard to the paper book.

15. In the meantime, the respondent had filed CM No. 2065/2003 dated 14th November, 2003 submitting that the appellant had failed to comply with the condition imposed by the Supreme Court by the order dated 24th March, 2003 and Therefore the appeal merited dismissal.

The respondent filed another application dated 29th April, 2004 which was registered as CM No. 5822/2004 stating that the appellant had failed to comply with the conditional order passed by the Apex Court and that as a result the respondent had filed CM No. 2065/2003 and prayed for early hearing of CM No. 2065/2003.

16. These applications were listed before this Court on 25th May, 2004 when the following order was passed thereon:

CM No. 5822/2004 in RFA No. 188/1982

We have perused the order dated 24th March, 2003 passed by the Supreme Court which is to the following effect:

In the facts and circumstances of the case, the order dated 6th May, 2002 passed in RFA No. 188/1982 is set aside and the said appeal is restored to its original file on appellants' filing requisite number of paper books duly corrected in High Court within four weeks from today.

This application has been filed by the respondent inter alias stating that the appellant has failed to comply with the conditional order passed by the Supreme Court and paper books within time has not been filed duly corrected in the High Court. Our attention has been drawn to the letter written by the Administrative Officer for Registrar of this Court dated 20th September, 2003 bringing to the knowledge of the learned Counsel for the appellant that the appear book filed is not complete. In the interest of justice, we further grant four weeks time to the appellant to complete the paper book in terms of the order passed by the Supreme Court and remove objections in terms of the letter of this Court sent on 20th September, 2003 failing which the appeal of the appellant will stand dismissed.

Renotify on 3rd August, 2004, the date already fixed along with item No. 1 in the category of 'Regular Matters'.

17. The order dated 25th May, 2004 was passed in the presence of the respondent and on an application filed by it. The respondent accepted the grant of further four weeks to the appellant to complete the paper books and to remove the objections in terms of the letter dated 20th September, 2003.

18. As noticed above, the counsel for the appellant had submitted detailed submissions dated 24th October, 2003 which were filed vide filing No. 40096 on 29th October, 2003 and which are available on the record of the case answering every objection raised by the registry in the letter dated 20th September, 2003 and pointing out as to how the same were wholly misconceived. Nothing further was required to be done by the registry. However, in view of the order dated 25th May, 2004, the appellant filed an application being CM No. 911/2004 seeking adjudication by the court on the objections raised by the registry in the letter dated 20th September, 2003 and pointing out the requirements of the High Court rules urging that there was no requirement to file the document which were being required to be filed by the Registry.

19. The appellant also filed yet another application dated 16th August, 2004 which was registered as CM No. 10303/2004 stating that Shri J.R. Goyal, Advocate who was earlier conducting the case of the appellant was more than 90 years of age and had duly complied with and met the objections raised by the Registry. It was further stated that the matter had not been taken up for final hearing and that the application of the appellant seeking decision as to whether

the documents which were mentioned in the Registry's letter dated 20th September, 2003 were at all necessary as per the rules to be incorporated in the paper book was still pending. Therefore, by this second application, the appellant stated that in order to avoid any unnecessary complications, irrespective of its contention that whether they were necessary or not, as a matter of abundant caution, the appellant was filing these documents as a supplementary paper book along with the application. The appellant prayed that the supplementary paper book filed by the applicants be taken on record. It was also stated that having regard to the valuable rights of the parties and the stakes in the nature of the property which was involved in the litigation, interests of justice merited that the matter be heard on merits.

20. These applications came up for hearing on 20th August, 2004 when it was pointed out by learned Counsel for the appellant that the appeal was on board for hearing and was to be taken up on 24th August, 2004. The respondents were given time to file replies to these applications which was finally taken up for hearing on 28th September, 2004 when the afore-noticed factual position was noticed by us. There can be no manner of doubt that the objections raised by the registry were duly answered by the appellant by detailed submissions which have not been denied or refuted by the registry. In view of the stand taken by the respondents, as a matter of abundant caution, the appellant filed CM No. 9112/2004 seeking orders of the court on the objections and the submissions raised by the registry in as much as no specific order rejecting the appellants contentions was passed by the registry thereon or thereafter.

In order to further avoid any delays on account of adjudication on the Registry's objections and the stand taken by the appellant, the appellant ever filed the documents which were being required by the registry, which according to the appellant were not required to be filed as per the Delhi High Court Rules, by way of a supplementary paper book and filed CM No. 10303/2004 seeking our order for placing the same on record.

21. We have noticed herein-above the rules requiring filing of paper books have been necessitated largely because a Regular First Appeal above a certain valuation is to be heard by a Division Bench. Availability of the paper books firstly takes out such records which are not necessary for adjudication of the appeal and secondly, the paper books are available in duplicate in a uniform format which facilitates hearing by a Bench of two Judges. Rule 2 of part A of Chapter 2 - V has conferred a discretion on the court which can give directions contrary to the requirement of filing a cyclostyled records. The particulars of the record which are required to be filed are contained in Chapter 3 and Schedule A of these Rules. As per Rule 5, in case of failure to cyclostyle any part of the record, the party loses his right to refer to the same and can do so only with the permission of the court during the hearing as revenue records etc. can be referred to in their original. The registry is required to scrutinise the record which is filed in accordance with Rule 6 and to notify the party with regard to

discrepancy, if any.

22. We find from the available record that in the instant case, paper books had been filed by the appellant as back as in 1991 which were scrutinized by the registry long thereafter. After the passing of the order by the Supreme Court on 24th March, 2003 the appellant removed defects and re-filed the paper books, which according to him, were sufficient compliance of the requirements of law and the applicable rules. The registry took almost five months pointing out certain defects vide its letter dated 20th September, 2003 to the appellant. Counsel for the appellant addressed detailed submissions in respect of each and every objection. The registry appears to have been satisfied with the answers given by the appellant and consequently took no further steps in respect thereof.

23. It was the respondent who filed the afore-noticed application which culminated in the passing of the order dated 25th May, 2004. Again the appellant did everything within its ability which was as per law. In order to obviate any further objection, the appellant filed CM Nos. 9112/2004 and CM No. 10303/2004 which have been decided by the orders passed by us on 28th September, 2004.

24. If the submissions on behalf of the respondent in the review petition were to be accepted, it would mean that the appellant had not complied with or removed the objections pointed out by the Registry on the 28th September, 2003. Then even the order dated 25th May, 2004, giving an opportunity to the appellant to complete the paper book and remove objections in terms of the letter dated 20th September, 2003, could not have been passed. No objection was made by the respondent to the passing of this order and the grant of time by this Court on the 25th May, 2004.

So far as objections of the Registry dated 20th September, 2003 are concerned, the appellant was of the view that it did not require to be done. In any case, pending orders of the court thereon, the appellant has filed the documents demanded by the registry as supplementary paper book in respect thereof.

25. Before us, long arguments have been addressed on the issue that the Delhi High Court Rules do not permit filing of the supplementary paper book. This submission is being noticed only to be rejected. The appellant has pointed out that the registry is requiring him to file such records which are not required to be filed under the rules. It is these records which have been filed by the appellant, pending court orders, referring them as a supplementary paper book. In our view, the objection of the respondent is wholly devoid of any legal merit

26. An appeal filed by the appellant was admitted for regular hearing and would Therefore deserve adjudication on merits. It was dismissed for non-prosecution in as much as the appellant had not taken timely steps in the matter at that stage. The position after the 24th October, 2003 has been that according to the appellant, it had removed all objections and had given Explanation as to why the other objections of the registry are not tenable. Such Explanation appears to

have been accepted by the registry and nothing further communicated thereon. Despite this position, in view of the objections taken by the respondent the appellant has placed even such documents which according to him are not required to be filed under the High Court Rules, by way of a supplementary paper book.

27. We find that Rule 3 of Part A of Chapter of II Vol. V of Delhi High Court Rules is explicit as to the documents which are required to be filed. The registry had objected to the fact that the appellant had not placed before the court two documents, a statement of witnesses AW-1 to AW-4 and the document which was exhibit AW-1/1. According to the appellant, these statements and the document were not part of the plaint or the main proceedings but were statement of witnesses in relation to an application. Perusal of the rules shows that the same is not required to be filed as part of the paper book.

28. Record of the lower court has been called for and received by the registry. The appellant has filed document which are required to be filed as per the rules and schedule. In case the respondent wants to refer to any other document, the rules permit liberty to it to seek permission and refer to the same. Rule 2 A provides that if the appellant fails to prepare and file the cyclostyled records within the prescribed time, the respondent shall have the right to file the same at the expense of the appellant after due notice to it. Even without default by the appellant, the respondent had ten cyclostyled copies of additional record which he may like to refer to at the hearing of the appeal within one month of the service of the notice of the appeal on him.

Therefore, in case the respondent was really and truly interested in expedited hearing of the appeal or was objecting to a genuine delay on the part of the appellant, nothing precluded him from filing, what according to the respondent was the correct paper book. As per the rules, the appellant would then have had to bear the cost of the expenses so incurred.

29. Even after the passing of the order granting time to the appellant on 25th May, 2004, without at all addressing the submissions which were made by the counsel for the appellant as back as on 24th October, 2003, the respondent has addressed a letter dated 21st February, 2006 to the registry pointing out errors in matters of detail in typing of the record which have been placed by the appellant. The extent of detail which has been referred to by the respondent in his communication which is now dated 21st February, 2006, evidences the fact that the respondent is not interested in adjudication of the appeal on merits and is only seeking the same to be dismissed on one technical ground or the other.

30. The registry has scrutinized the record and on 21st July, 2005, it was noted that the paper book filed earlier and the supplementary paper books are correct and in order. The noting records that the lower court record is also placed along with the file.

31. We have considered the matter at length and passed an order on two

applications of the appellant. In our view there is no error on the face of the record nor any error of jurisdiction. The registry is satisfied that the paper books are correct. It is open to the respondent to file paper books which according to him are required to be filed after filing an appropriate application before the court in this behalf. In any case, the original record of the lower court is available for perusal and reference. In any case, no prejudice is being caused to any party from the order which has been passed in the present matter.

32. In a judgment reported at Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, the Supreme Court observed that "procedure" is something designed to facilitate justice and further its ends. It is not a penal enactment for punishment and penalties and not a thing designed to trip people up. Two technical constructions of the provisions of the procedural statute leaves no room for reasonable elasticity of interpretation should Therefore be guarded against provided always that justice is done to both sides, lest the very mean designed for the furtherance of justice be used to frustrate it.

33. In 1997 (8) SCC Parsion Devi and Ors. v. Sumitri Devi and Ors. the Supreme Court held that a judgment may be open to review inter alias 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 exercise of power of review by the court. In exercise of review jurisdiction, it is not permissible for even an erroneous decision to be re-heard and corrected.

34. So far as the power of review available to a court is concerned, in Ajit Kumar Rath Vs. State of Orissa and Others, the court held thus that this power is not an absolute power and is hedged by the restriction indicated in Order 47 of the Code of Civil Procedure. Such power can be exercised on the application of a person, on the discovery of new and important matter or the evidence which, after the exercise of due diligence, was not within his knowledge or could not reproduce by him at the time when the order was made. This power can also be exercised on account of some mistake or error apparent on the fact of the record or for any other sufficient reason. A review cannot be sought merely for fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stays in the face without any elaborate argument being needed for establishing it.

So far as the expression "any other sufficient reason" used in Order 47 Rule 1 which provides the power to review is concerned, it was held by the Supreme Court that the same means a reason, sufficiently analogous, to those specified in the rule. Any attempt, except an attempt to correct an error apparent or an attempt not placed on any ground set out in order 47, was held by the Apex Court to amount to an abuse of the liberty even to the Tribunal under the Act to review its judgment. So far as the instant case is concerned, in our view, there is no such inherent error apparent on the face of the record or effecting the jurisdiction of this Court. The application is also not based on discovery of any

new material. The contention of the respondent is that the appellant has not removed defects while the appellant contends that all defects have been removed. The Registry has also noted on the 21st July, 2005 that all defects stand removed by the appellant. In our view, the grounds on which the application of the respondent is based, do not satisfy the grounds for review of an order as has been prescribed under Order 47 of the Code of Civil Procedure.

35. In the instant case, the objections of the respondent entail a word by word scrutiny by us of the paper book filed by the appellant as the mistakes/errors which are pointed out by the respondent relate largely to typing errors. These certainly are not such errors which are apparent on the face of the record or have worked any injustice to the respondent. We are also unable to agree with the respondent that the order passed by us on 28th September, 2004 is devoid of jurisdiction. The Supreme Court had directed the appellant to file corrected paper book which according to it has been done and this Court extended the time for the same by the order dated 25th May, 2004 to which the appellant never objected. The registry is also satisfied that the objections stand removed.

36. In *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, it was held that a party cannot be refused relief merely because of a mistake, negligence, or infraction of rules of procedure.

37. Laws of procedure are meant to regulate effectively, assist and aid the object of substantial and real justice and not to foreclose even an adjudication on the merits of the substantial rights of citizens of property, personal and other laws 2004 (114) DLT 304 S. Amarjit Singh Kalra (dead) by Lrs. and Others and Smt. Ram Piari (dead) by L.Rs. and Others Vs. Smt. Pramod Gupta (dead) by Lrs. and Others, In AIR 198 SC 355 *Kalipada Das alias Mahanto and Others Vs. Bimal Krishna Sen Gupta (Dead) by Lrs., Kalipada Das and Ors. v. Bimal Krishna Sen Gupta (dead) by L.Rs.*, it was emphasised that rules of procedure are hand maidens to the ends of justice.

In our view, Therefore, looked at from any angle, there is no merit in the objections of the respondent or the present application.

38. For all these reasons, we find no merit in this application which is dismissed.

39. However, hearing in this matter has been delayed by this application which is not only devoid of all merits but is frivolous and is intended to prevent adjudication on the merits of the appeal. The only intention of the respondent is to seek dismissal of the appeal on technical grounds. Thereby, the adjudication in the appeal itself has been delayed.

In these circumstances, we are of the view that the respondent should be required to be burdened with costs which are quantified at Rs. 25,000/-. The applicant shall deposit Rs. 10,000/- each with the Delhi High Court Legal Services Authority and the Delhi High Court Bar Association Lawyers' Social Security & Welfare Fund, New Delhi and pay the balance amount to the appellant

within a period of two weeks from today.