

**(2012) 01 DEL CK 0541**

**In the Delhi High Court**

**Case No :** Review Petition 93 of 2011 and CM 4185 of 2011 in FAO (OS) 537 of 2010

South India Shipping and Export Co.

APPELLANT

Vs

Tribal Cooperative Marketing Development Federation of India Ltd.

RESPONDENT

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**Date of Decision :** 20-01-2012

**Acts Referred:**

**Citation :** (2012) 01 DEL CK 0541

**Hon'ble Judges :** G.P. Mittal, J;Anil Kumar, J

**Bench :** Division Bench

**Advocate :** Sudhir Nandrajog, with Mr. Kirtiman Singh and Mr. T. Singhdev, for the Appellant; Alakh Kumar, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

G.P. Mittal, J.—An Objection Petition u/s 34 of the Arbitration and Conciliation Act, 1996 (the Act) was preferred by the Petitioner (herein) on 16.01.2009 challenging the award dated 23.10.2008 passed by the Arbitrator. The Objection Petition came to be dismissed by the Learned Single Judge by an order dated 02.04.2009. Aggrieved by the order dated 02.04.2009 the Appellant preferred a SLP (SLP) before the Hon'ble Supreme Court 18.03.2010. By an order dated 14.05.2010 the Appellant was permitted to withdraw the SLP with liberty to seek appropriate remedy available under law against the order dated 02.04.2009 passed by the learned Single Judge.

2. The Appellant filed an Appeal u/s 37 of the Act on 6th August, 2010. Along with the aforesaid Appeal an application u/s 5 of the Limitation Act was preferred for condonation of delay of 433 days in filing the Appeal. The application for condonation of delay and consequently, the Appeal was dismissed by the order dated 24.12.2012 holding that the Appellant's conduct showed that there was gross negligence, inaction and want of bonafides.

3. The Appellant seeks review of the order dated 24.12.2012 dismissing the application for condonation of delay on the ground that there is error apparent on the face of record, in as much as although the Appellant pleaded that there was a delay of 433 days in filing the Appeal; in fact there was no such delay in view of the order dated 14.05.2010 passed by the Supreme Court. Order dated 14.05.2010 is extracted hereunder:-

...Delay condoned.

Counsel for the Petitioner seeks permission to withdraw this SLP so that the petitioner may seek appropriate remedy.

The SLP is dismissed as withdraw....

4. It is urged by Mr. Sudhir Nandrajog Learned Senior Counsel for the Petitioner that in the impugned judgment (dated 24.12.2012) it has been observed that the order dated 14.05.2010 passed by the Supreme Court was not placed on record, although the same was very much on record at page 26 of the paper book. It is pleaded that on account of inadvertence, the same was not brought to the notice of the Court. Thus, it is contended that there is an error apparent on the face of the record and the order dated 24.12.2010 is liable to be reviewed and recalled.

5. As stated earlier, the SLP against the order dated 02.04.2009 was filed before the Supreme Court only on 18.03.2010 i.e. after more than 11 months of passing of the order. It is true that the Supreme Court condoned the delay but that was only for filing the SLP. The Appellant can rely upon Section 14 of the Limitation Act, to exclude the time during which he had been prosecuting with "due diligence" another civil proceeding in the Supreme Court, against the order dated 02.04.2009. We would not go into the question whether there was due diligence or there was good faith in prosecuting the SLP before the Supreme Court. What we are concerned here is whether there was an error apparent on the face of the record.

6. The power of review can be exercised on account of some mistake or error apparent on the face of the record. A review cannot be claimed or asked 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 a correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. In *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, , the Supreme Court held as under:-

There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of

error apparent on the face of the record would be made out.

7. In *Lily Thomas, Vs. Union of India and Others*, , the Supreme Court observed that Review is not an Appeal in disguise and that the review is permissible only on the ground provided in the Statute. Para 52 of the report in *Lily Thomas (supra)* is extracted hereunder:-

52. 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. This Court in *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, 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. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of Justice. Law has to bend before Justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in *S. Nagaraj and Others Vs. State of Karnataka and Another*, held:-

Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order the Courts culled out such power to avoid abuse of process or miscarriage of justice. In *AIR 1941 1 (Federal Court)* the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh (1836) 1 Moo PC 117* that an order made by the Court was final and could not be altered.

8. Turning to the facts of the instant case, the SLP was dismissed as withdrawn by an order dated 14.05.2010. It may be mentioned that the Appeal was prepared on 08.07.2010 but it was filed only on 06.08.2010/20.08.2010 i.e. after a period of 71 days of the withdrawal of the SLP.

9. As per Article 117 of the Schedule to the Limitation Act, the period of limitation for filing an Appeal from an order or a decree of any High Court to the same Court is 30 days. Therefore, after 14.05.2010, the Appellant was under obligation to file an Appeal in this Court immediately unless there was some explanation for the delay after the said date.

10. In the order dated 24.12.2010, this Court observed as under:-

It seems that the Appellant had been prosecuting its lis at its pleasure, whims and fancies. Furthermore, as per the case of the Appellant itself, the Appeal was dismissed as withdrawn on 14th May, 2010. The instant Appeal, according to the Appellant was filed in this Court on 9th July, 2010 (though the same does not appear to be correct as per record) and the Appeal seems to be filed only on 6th August, 2010 and refilled on 25th August, 2010. Assuming that the Appeal was filed in this Court on 9th July, 2010, as claimed by the Appellant, the explanation given by it that the Appeal was filed as soon as copy of the order of the Hon''ble Supreme Court was received, smacks of complete indifference on the part of the Appellant. As stated above, copy of the Order passed by the Hon''ble Supreme Court has not been placed on record. It is not disclosed by the Appellant as to whether it ever applied for any certified copy and when the same was supplied to it."

11. Therefore, even if this Court observed that copy of the order dated 14.05.2010 was not placed by the Appellant in the Appeal, yet the Application for Condonation of Delay was not dismissed for not filing the copy of the order of the Supreme Court. It is evident that the conduct of the Appellant post order dated 14.05.2010 passed by the Supreme Court was considered and this Court opined that the Appellant''s conduct smacked of complete indifference.

12. It may be noted that the order sought to be reviewed was passed on 24.12.2010. The instant Review Petition was filed on 04.02.2011 i.e. after a period of 42 days. Article 124 of the Limitation Act, 1963 provides a limitation period of 30 days for seeking review of a judgment passed by any Court other than the Supreme Court. The Appellant is completely silent as to why it took so long to file an Application for Review.

13. In *Shri Nivruti G. Ahire v. The State of Maharashtra*, 2007 (5) Mh. LJ 284, a Division Bench of Bombay High Court held that no certified copy is required for filing a review application. An application filed after a period of 32 days after obtaining a certified copy of the SLP was not entertained by the Bombay High Court. In this case no such averment has also been made.

14. We do not find any error apparent on the face of the record which would compel us to review the judgment dated 24.12.2010.

15. The Review Petition is devoid of any merit; it is accordingly dismissed.

16. Pending application also stands disposed of.