
(2023) 08 GAU CK 0062
In the Gauhati High Court
Case No : Review Petition No. 4 Of 2022

Union Of India

APPELLANT

Vs

M/S. P. P. Enterprise

RESPONDENT

Date of Decision : 29-08-2023

Acts Referred:

Code of Civil Procedure, 1908 — Section 114, Order 47 Rule 1

Citation : (2023) 08 GAU CK 0062

Hon'ble Judges : Parthivjyoti Saikia, J

Bench : Single Bench

Advocate : G. Goswami, M. Sharma

Final Decision : Dismissed

Judgement

1. Heard Mr. G. Goswami, learned counsel representing the petitioner as well as Ms. M. Sharma, learned counsel appearing for the respondent.
2. This is an application under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure praying for reviewing the order of this Court dated 25.11.2021 passed by this Court in MFA No.65/2015.
3. There was a short delivery of goods carried by the Railways. The counsel representing the petitioner admitted that there was criminal intervention en route before reaching the destination. Finally, the appeal was dismissed by this Court.
4. Now, the counsel representing the review petitioner has claimed that the counsel in the appeal never admitted occurrence of criminal intervention.
5. I have considered the submissions made by the learned counsels of both sides.
6. Now, the question arises whether the powers of review provided by Order 47 Rule 1 of the CPC can be applied in the present case.
7. A brief visit to the relevant provision would be fruitful. Order 47, Rule 1 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 to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for there view. [Explanation-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

8. In *S. Bagirathi Ammal vs Palani Roman Catholic Mission*, reported in 2009 (10) SCC 464, referring to the provisions under Order XLVII Rule 1 C.P.C. the Hon'ble Supreme Court has held –

“ A reading of the above provision makes it clear that Review is permissible (a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed; (b) on account of some mistake; (c) where error is apparent on the face of the record or is a palpable wrong; (d) any other sufficient reason. If any of the conditions satisfy, the party may apply for a review of the judgment or order of the Court which passed the decree or order. The provision also makes it clear that an application for Review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the Court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the appellant, in such circumstances, the review will lie. Under the guise of review, the parties are not

entitled re-hearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set at right by reviewing the order."

9. In *Inderchand Jain (D) Th.Lrs. vs Motilal (D) Th.Lrs* [(2009)14 SCC 663], the Supreme Court has discussed the jurisdiction of a Court to review its own decision. The Hon'ble Supreme Court reiterated the principles of review in this way –

(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 C.P.C.

(ii) Power of review may be exercised when some mistake or error apparent on the face of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on the points where there may be conceivable be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an Advocate.

(v) An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit'."

10. The phrase 'actus curiae neminem gravabit' means an act of the Court shall prejudice no one. In *Inderchand Jain (D) Th.Lrs. vs Motilal (D) Th.Lrs* (supra), the Hon'ble Supreme Court has held that a mistake on the part of the court may also call for a review of the order.

11. In *Union of India v. Sandur Manganese & Iron Ores Ltd.*, (2013) 8 SCC 337, the Supreme Court has held as under-

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

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

12.2. Mistake or error apparent on the face of the record.

12.3. Any other sufficient reason. The words "any other sufficient reason" have been interpreted in *Chhajju Ram v. Neki* [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Mar Poulose Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] , to mean "a reason sufficient on grounds, at least analogous to those specified in the rule"."

12. Coming back to the case in hand, in the guise of reviewing an order, a court cannot entertain an appeal. The petitioner has treated this review application as an appeal by touching the merit of the case. There is no error apparent on the face of the record to invite review of the order under Order 47 Rule 1 of the Civil Procedure Code.

13. Therefore, the present review petition is found to be devoid of merit and stands dismissed accordingly.