Mina Devi Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Sep-19-2016

Appellant : Mina Devi

Respondent : State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Civil Review No. 81 of 2010 Mina Devi, wife of Nand Kishore Mehta, resident of Ghori, P.O.- Ghori, P.S.- Bermo, District- Bokaro ---Petitioner Vs.

1. The State of Jharkhand 2. The Additional Member, Board of Revenue, Jharkhand, Ranchi at P.O. & P.S.- Dhurwa, District- Ranchi 3.The Deputy Commissioner, Bokaro at P.O. & P.S.- Bokaro Steel City, District-Bokaro 4. The Additional Collector, Giridih at P.O. & P.S. Giridih, District- Giridih.

5. The Sub Divisional Officer, Bermo at P.O. & P.S.- Tenughat, District- Giridih (6A). Akhatari Khatoon (6B). Md. Asraf (6C). Md. Ekhlque, Resident of Village & P.O.- Ghori, P.S.- Bermo, District-Bokaro (7A). Md. Mustakim, resident of Village and P.O.- Ghori, P.S.- Bermo, District- Bokaro (7B). Einul Haque (7C). Md. Rafique, (7A) & (7B) are resident of Bishanpur, P.O.- Pachana, P.S.- Giridih, District- Giridih ----Opposite Parties CORAM: HON'BLE MR. JUSTICE D.N. PATEL HON'BLE MR. JUSTICE RATNAKER BHENGRA For the Petitioner: Mr. V. Shivnath, Sr. Advocate For the State: J.C. to G.P. II For the O.P. Nos. (6A),(6B) & (6C): Mr. Kundan Kumar Ambastha, Advocate For the O.P. Nos. (7A),(7B) & (7C):

Mr. Satish Kumar Keshri, Advocate 32/Dated 19th September,2016 Oral Order Per D.N. Patel,J:

1. This civil review has been preferred for reviewing the order passed by the Division Bench of this Court in L.P.A. No. 408 of 2009 dated 22 nd May, 2010, whereby the L.P.A. preferred by this applicant was dismissed by 2 the Division Bench of this Court.

2. Counsel appearing for the applicant submitted that initially there was two houses which were purchased by the husband and the wife for which two applications under section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the Act, 1961', for the sake of brevity) had been preferred by respondent no. 6, because there were two properties, one was purchased by the husband and another by wife. Both these applications were preferred before the Land Revenue Deputy Commissioner-SDM, Bermo at Tenughat. Both these applications were rejected by this authority vide order dated 1st February, 1986, against which, appeal was preferred by respondent no. 6 under section 30 of the Act, 1961 before the Deputy Commissioner, Bokaro, who also dismissed the appeal preferred by respondent no. 6 vide order dated 29th August, 1997. It is further submitted by the counsel for this applicant that being aggrieved and feeling dissatisfied by the aforesaid order of the Deputy Commissioner, Bokaro, respondent no. 6 preferred a revision application before the Member, Board of Revenue under section 32 of the Act, 1961. The Board of Revenue remanded the matter vide order dated 28th July, 1994 to the Additional Collector, who is also concurrently empowered like Deputy Commissioner under section 30 of the Act, 1961. It is further submitted by the counsel for the applicant that Additional Collector, Bokaro decided the appeal, after remand of the matter, in favour of this applicant vide order dated 23 rd December, 1997. Against which, respondent no. 6 preferred a revision application under section 32 of the Act, 1961 before the Member, Board of Revenue. This Board of Revenue allowed the revision application. Thus right of 3 preemption claimed by respondent no. 6 under section 16(3) of the Act, 1961 was allowed vide order dated 10 th July 2002.

3. It is further submitted by the learned counsel for the applicant that being aggrieved and feeling dissatisfied by the order passed by the Board of Revenue, both the husband and wife, preferred two separate writ petitions being WPC No. 4673 of 2002 (by wife- this applicant) and WPC No. 4672 of 2002 (by husband). WPC No. 4672 of 2002 (by husband) was dismissed for default for which CMP No. 148 of 2007 was preferred for restoration, which was allowed vide order dated 11 th August, 2008 and the WPC No. 4672 of 2002 was restored to its original file with the same number preferred by husband. We are not concerned with this writ petition at all, in this case. This reference is made because the W.P.(C) No. 4672 of 2002 is similar like of the present one, which is preferred by the wife.

4. WPC No. 4673 of 2002(preferred by wife- the present applicant) was dismissed for default in the year 2002. Now CMP No. 304 of 2002 was preferred by the wife (present applicant). This CMP was also dismissed for default vide order dated 19 th September, 2003. For the restoration of CMP No. 304 of 2002, another C.M.P. No. 147 of 2007 was instituted (by wife-present applicant), but, without any delay condonation application. Office defect was pointed out by the registry of this Court and later on interlocutory application was preferred for delay condonation, in the year 2009, having a delay of 1290 days. This delay was not condoned by the learned Single Judge and it was dismissed vide order dated 3rd August, 2009.

5. Being aggrieved by this order passed by the learned Single Judge, L.P.A. No.408 of 2009 was preferred by this 4 applicant which was dismissed vide order dated 22 nd May, 2010 by the Division Bench of this Court. Against the aforesaid dismissal of L.P.A., the present civil review no. 81 of 2010 has been preferred.

6. Counsel appearing for the applicant has submitted that similarly situated WPC No. 4672 of 2002 was ultimately restored by the learned Single Judge and there as no reason for the learned Single Judge not to restore WPC No. 4673 of 2002, preferred by the wife (present applicant).

7. The law point involved in the writ petition is, when the land with a super structure purchased by this applicant and her husband in the year 1982 and these husband and wife are in possession of the property in question, whether respondent no. 6 has right of preemption under section 16(3) of the Act, 1961 or

not? This applicant is even ready to pay reasonable cost to the respondent and it is submitted by the counsel for the applicant that WPC No. 4673 of 2002 may be restored to its original file, so that on merit, the matter can be decided by the learned Single Judge.

8. Counsel appearing for the respondent no. 6 submitted that no error has been committed by the Division Bench of this Court in dismissal of L.P.A. vide order dated 22nd May, 2010 and hence, the present civil review may not be allowed by this Court on merit. Learned counsel for the applicant has argued out on merit, which may not be allowed by this Court in the civil review. It is submitted by the counsel for respondent no. 6 that this Civil Review application is not an appeal in disguise. In fact delay in L.P.A. was not condoned on merit. Even if, this order on merit requires, to be overruled, it cannot be done in Civil Review, because it is not an appeal against rejection of delay condonation 5 application. REASONS9 Having heard counsel for both the sides and looking to the facts and circumstances of the case, it appears that originally both husband and wife had purchased the properties with a super structure in the year 1982. They are claiming possession also. Respondent No.6 is a neighbour having an eye upon the properties in question. He is claiming right of pre-emption to purchase the property in question under Section 16(3) of the Act, 1961. Unsuccessful attempts were made by the respondent No.6, initially before LRDC, who rejected the application preferred by the respondent No.6 vide order dated 1st February, 1986. Thereafter, the respondent No.6 lost appeal also before the Deputy Commissioner, Bokaro, who also dismissed the appeal preferred by respondent No.6 vide order dated 29 th August, 1997. Against which, respondent No.6 preferred a revision application and the matter was remanded. It further appears that when the matter was remanded to the Additional Collector to decide afresh the appeal, he again dismissed the claim of the respondent No.6 vide order dated 23rd December, 1997. Now respondent No.6 preferred a revision application before Board of Revenue, which was allowed vide order dated 10 th July, 2002. Against which, this applicant preferred W.P.(C) No. 4673 of 2002.

10. Now bottleneck starts. The poor applicant could not manage properly the writ petition and the same was dismissed for default. C.M.P. No. 304 of 2002 was

preferred immediately and the same was again dismissed for default vide order dated 19 th September 2003. The lawyer was engaged by this applicant-lady. Fault more lies on the part of the Advocate. Again C.M.P. No. 147 of 6 2007 was instituted for restoration of C.M.P. No. 304 of 2002. Again Advocate was engaged but he could not file delay condonation application and ultimately, defect was pointed out by the Registry of this High Court and later on interlocutory application for delay condonation was preferred in the year 2009 with the delay of 1290 days and it was dismissed vide order dated 3 rd August, 2009 on merit. Against this order, L.P.A. No. 408 of 2009 was preferred, which was dismissed by the Division Bench of this Court vide order dated 22nd May, 2010. It appears that the Division Bench of this Court has observed in para-4 that there are no sufficient reasons to differ with the views taken by the learned Single Judge. Thus, on merit, the L.P.A. has been dismissed by the Division Bench of this Court. Counsel appearing for the applicant is ready to make payment of cost of Rs.50,000/- (Rupees Fifty Thousand) but this is not helpful to the applicant because civil review application cannot be treated as an appeal in disguise, howsoever, better may be the reasons on merit of the case. Now the ground available with the applicant for delay condonation, the same cannot be looked into. For the left out arguments, no civil review application can be preferred Even if the order passed by the Division Bench of this Court is erroneous on merit, no civil review application can be preferred. Civil Review Application can be preferred only for correction of errors apparent on the face of the record. Civil Review Application will be governed basically on the principles which are enumerated in the Order XLVII of the Civil Procedure Code, 1908.

11. It has been held by the Hon'ble Supreme Court in the case of Aribam Tuleshwar Sharma v. Aibam Pishak Sharma, reported in (1979) 4 SCC389 at Para no. 3 as under :

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3. The Judicial Commissioner gave two reasons for reviewing his predecessors order. The first was that his predecessor had overlooked two important documents Exs. A-1 and A-3 which showed that the respondents were in possession of the

sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in Shivdeo Singh v. State of Punjab 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. (Emphasis supplied) 12. It has further been held by Hon'ble Supreme Court in the case of Meera Bhanja v. Nirmala Kumari Choudhury, reported in (1995) 1 SCC170 specially at Para nos. 8, 9 and 15 as under :

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 1, CPC. 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 the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para

3) It is true as observed by this Court in Shivdeo Singh v. State of Punjab, 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 8 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 power which may enable an appellate court to correct all manner of errors committed by the subordinate court.

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent 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 points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record: 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.

15. In our view the aforesaid approach of the Division Bench dealing with the review proceedings clearly shows that it has overstepped its jurisdiction under Order 47, Rule 1 CPC by merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error

or error apparent in view of the settled legal position indicated by us earlier. In substance, the Review Bench has reappreciated the entire evidence, sat almost as court of appeal and has reversed the findings reached by the earlier Division Bench. Even if the earlier Division Benchs findings regarding C.S. Plot No. 74 were found to be erroneous, it would be no ground for reviewing the same, as that would be the function of an appellate court. Learned counsel for the respondent was not in a position to point out how the 9 reasoning adopted and conclusion reached by the Review Bench can be supported within the narrow and limited scope of Order 47, Rule 1 CPC. Right or wrong, the earlier Division Bench judgment had become final so far as the High Court was concerned. It could not have been reviewed by reconsidering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers. Only on that short ground, therefore, this appeal is required to be allowed. The final decision dated 8-7-1986 of the Division Bench dismissing the appeal from Appellate Decree No. 569 of 1973 insofar as C.S. Plot No. 74 is concerned as well as the review judgment dated 5-9-1984 in connection with the very same plot, i.e., C.S. Plot No. 74, are set aside and the earlier judgment of the High Court dated 3-8-1978 allowing the second appeal regarding suit Plot No. 74 is restored. The appeal is accordingly allowed. In the facts and circumstances of the case, there will be no order as to costs. (Emphasis supplied) 13. It has further been held by the Hon'ble Supreme Court in the case of Parsion Devi v. Sumitri Devi, reported in (1997) 8 SCC715 specially in Para nos. 7 to 9 as under :

7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P. (SCR at p.

186) this Court opined: 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 while quoting with approval a passage from Aribam Tuleshwar Sharma v. Aribam Pishak Sharma 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 1 CPC.

9. Under Order 47 Rule 1 CPC a judgment may be open 10 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 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC 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 supplied) 14. It has further been held by Hon'ble Supreme Court in the case of Haridas Das v. Usha Rani Banik, reported in (2006) 4 SCC78 specially in Para nos. 13 to 18 as under :

13. In order to appreciate the scope of a review, Section 114 CPC 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 47 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. 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. This Court in Thungabhadra Industries Ltd. v. Govt. of A.P. held as follows: (SCR p.

186) [T]here 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. where without any elaborate argument one could point to the error and say 11 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.

14. In Meera Bhanja v. Nirmala Kumari Choudhury it was held that:

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 1 CPC. 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, this Court, in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma speaking through Chinnappa Reddy, J.

has made the following pertinent observations: 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 power which may enable an appellate court to correct all manner of errors committed by the subordinate court. (SCC pp. 172-73, para

8) 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 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, 12 para

3) It is true as observed by this Court in Shivdeo Singh v. State of Punjab 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 has been followed in Meera Bhanja. 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. Millikarjun Bhavanappa Tirumale were also noted: (AIR p.

137) 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. (SCR pp. 901-02) 18. It is also pertinent to mention the observations of this Court in Parsion Devi v. Sumitri Devi. Relying upon the judgments in Aribam and Meera Bhanja it was observed as under: (SCC p. 719, para 9)

9. Under Order 47 Rule 1 CPC 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 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is 13 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 supplied) 15. Recently in a case of Haryana State Industrial Development Corpn. Ltd. v. Mawasi,reported in (2012) 7 SCC200 the Honble Supreme Court, specially in Para nos. 26 to 30 and 32 to 35, has held as under :

26. At this stage it will be apposite to observe that the power of review is a creature of the statute and no court or quasi-judicial body or administrative authority can review its judgment or order or decision unless it is legally empowered to do so. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The rules framed by this Court under that article lay down that in civil cases, review lies on any of the grounds specified in Order 47 Rule 1 of the Code of Civil Procedure, 1908 which reads as under: Order 47 Rule 1:

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 of which he applies for the review. 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.

27. The aforesaid provisions have been interpreted in several cases. We shall notice some of them. In S. Nagaraj v. State of Karnataka, this Court referred to the judgments in Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai and Rajunder Narain Rae v. Bijai Govind Sing and observed: (S. Nagaraj case, SCC pp. 619-20,

para

19) 14

19. 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 Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai 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 Sing that an order made by the Court was final and could not be altered: (Rajunder Narain Rae case, MIA p.

216) nevertheless, if by misprision in embodying the judgments, errors have been introduced, these courts possess, by common law, the same power which the courts of record and statute have of rectifying the mistakes which have crept in. The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have, however, gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects, in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies. Basis for exercise of the power was stated in the same decision as under: It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard. Rectification of an order

thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted 15 this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order 40 had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, for any other sufficient reason in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order 40 Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.

28. In Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius, the three-Judge Bench referred to the provisions of the Travancore Code of Civil Procedure, which was similar to Order 47 Rule 1 CPC and observed: (AIR p. 538, para 32)

32. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. 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 applicants 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, at least analogous to those specified in the rule. (See Chhajju Ram v. Neki.) This conclusion was reiterated by the Judicial Committee in Bisheshwar Pratap Sahi v. Parath Nath and was adopted by our Federal Court in Hari Sankar Pal v. Anath Nath Mitter, FC at pp. 110-11. The learned counsel appearing in support of this appeal recognises the aforesaid limitations and submits that his case comes within the ground of mistake or error apparent on the face of the record or some ground analogous thereto.

29. In Thungabhadra Industries Ltd. v. Govt. of A.P., another three-Judge Bench reiterated that the power of review is not analogous to the appellate power and observed: (AIR p. 1377, para

11) 16

11. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that 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.

30. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, this Court answered in affirmative the question whether the High Court can review an order passed under Article 226 of the Constitution and proceeded to observe: (SCC p. 390, para 3)

3. 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.

32. In Parsion Devi v. Sumitri Devi, the Court observed: (SCC p. 719, para 9)

9. 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 1 CPC A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise.

33. In Lily Thomas v. Union of India, R.P. Sethi, J., who concurred with S. Saghir Ahmad, J., summarised the scope of the power of review in the following words: (SCC p. 251, para 56)

56. 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. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated 17 jurisdiction of equal strength has to be followed and practised.

34. In Haridas Das v. Usha Rani Banik, the Court observed: (SCC p. 82, para 13)

13. The parameters are prescribed in Order 47 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. 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.

35. In State of W.B. v. Kamal Sengupta, the Court considered the question whether a Tribunal established under the Administrative Tribunals Act, 1985 can review its decision, referred to Section 22(3) of that Act, some of the judicial precedents and observed: (SCC p. 633, paras 21-22)

21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional 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 earlier.

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 1 CPC 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. (Emphasis supplied) 18 16. In view of the aforesaid facts, reasons and judicial pronouncements, this civil review application is, hereby, dismissed, because on merit, we are not inclined to pass any further order upon the order of dismissal of LPA No. 408 of 2009, which was dismissed vide order dated 22 nd May, 2010, otherwise this Civil Review Application will be like an appeal, which is not permissible. There is no error apparent on the face of the record. The question arises, what is the error apparent, on the face of the record and the answer is if the error is to be found out by lengthy arguments then the

same cannot be treated as an error apparent on the face of the record. If lengthy arguments are required to be canvassed in civil review application to find out an error in the judgment, which will be in the nature of detail search of an error in the judgment, in this eventualities, it is not an error apparent on the fact of the record. Once, the delay condonation application was dismissed by the learned Single Judge vide order dated 3rd August, 2009 in CMP No. 147 of 2007, again LPA is also dismissed on merit, we see no reason to entertain this civil review application, even if the reasons available with this applicant are better, looking to the limited scope of civil review application especially in the light of the aforesaid decisions of Hon'ble Supreme Court. Readiness of the payment of the cost can hardly be a ground of civil review. Hence, there is no substance in civil review application and the same is, therefore, dismissed. (D.N. Patel,J.) (Ratnaker Bhengra,J.) Sharda/S.B.