Sr. No.9

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CONSW No. 55/2012 in
RPSW No. 20/2013
IA No. 07/2012

Shahzad Khalid …..Appellant(s)/Petitioner(s)

Through: Mr. P.N. Bhat, Advocate.

Vs

State of J&K and ors. ….. Respondent(s)

Through: Mr. Vishal Bharti, Dy. AG.

Coram: HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, JUDGE

ORDER
04.10.2021

(Open Court)

CONSW No. 55/2012

The instant application has been filed, seeking condonation of delay in filing the review petition.

For the reasons stated in the application and those urged at the time of hearing, the same is allowed. Delay of 28 days in filing the review petition is condoned.

Application is, accordingly, ***disposed of***.

RPSW No. 20/2013

1. The present review petition has been filed, seeking review of the judgment and order dated 09.10.2012.

2. It is stated that in the aforementioned petition, the petitioner was not made a party respondent and further that the writ petitioners in SWP No. 2251/2012 had not specifically questioned the order of appointment of the petitioner herein.

3. On a perusal of the judgment and order dated 09.10.2012, in regard to which, the present review petition has been filed, it can be seen that the directions are general in character. The Writ Court had directed the official respondents to verify as to whether Bandachan was a habitation of Village Gool and whether the said habitation satisfies the two requirements, which were provided in explanation contained in Government order No. 288-Edu. of 2009 dated 08.04.2009. It was further ordered that while conducting the enquiry for ascertaining the aforementioned facts, all competing candidates would be given an opportunity of hearing.

4. In my opinion, in case, the impugned judgment and order was prejudicial to the interest of the petitioner, in any manner, then the right remedy for the petitioner to avail was to file an LPA after seeking leave in that regard, which has not been done. The judgment and order impugned, on the face of it, does not suffer from any error apparent on the face of the record.

5. The scope of powers exercisable by a court in its review jurisdiction is no longer *re- integra*.

6. In **Thungabhadra Industries Ltd. v. Govt. of A.P., AIR 1964 SC 1372**, the Apex Court held as under:-

> **"……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 characterized as vitiated by 'error apparent'. <u>A review is by no means an</u>**

> **appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."**

7. The above position of law was reiterated in the case reported as **Parsion Devi and Others v. Sumitri Devi and Others, (1997) 8 SCC 715,** by holding as under:

> **"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 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"**

8. In **Board of Control for Cricket, India and another v. Netaji Cricket Club and others, AIR 2005 SC 592,** the Apex Court in paragraphs 89 and 90 of the judgment, held as under:-

> **"89.Order 47, Rule 1 of the Code provides for filing an application for review. Such 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.**
>
> **90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefore. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".**

9. In **Kamlesh Verma v. Mayawati and Others, (2013) 8 SCC 320,** while dealing with the issue, the Apex Court detailed the grounds on which a

review is maintainable and otherwise. In paragraphs 19 and 20 of the judgment, it was held as under:-

> **"19.** Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.
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> **Summary of the principles**
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> **20**. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:
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> **20.1**. When the review will be maintainable:
>
> i)Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
>
> ii)Mistake or error apparent on the face of the record;
>
> iii)Any other sufficient reason.
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> The words "any other sufficient reason" have been interpreted in **Chhajju Ram v. Neki, AIR 1992 PC 112** and approved by this Court in **Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius, AIR 1954 SC 526,** to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in **Union of India v. Sandur Manganese & Iron Ores Ltd.,(2013) 8 SCC 337.**
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> **20.2.**When the review will not be maintainable:
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> i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
>
> ii) Minor mistakes of inconsequential import.
>
> iii)Review proceedings cannot be equated with the original hearing of the case.
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> iv)Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
>
> v)A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but les only for patent error.

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

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

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

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

10. Again in **N.Anantha Reddy v. Anshu Kathuria & Ors, (2013)15 SCC 534,** the Apex Court held as under:-

"A careful look at the impugned order would show that the High Court had a fresh look at the question whether the appellant could be impleaded in the suit filed by the respondent No.1 and, in the light of the view which it took, it recalled its earlier order dated 08.06.2011. The course followed by the High Court is clearly flawed. The High Court exceeded its review jurisdiction by reconsidering the merits of the order dated 08.06.2011. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits."

11. Be that as it may, having heard learned counsel for the petitioner, in my opinion, the petition is found to be without any merit and the same is, accordingly, **dismissed** along with connected application.

(Dhiraj Singh Thakur)
Judge

Jammu
04.10.2021
Ram Krishan

Whether the order is speaking? Yes/No
Whether the order is reportable? Yes/No