

(Under Circulation)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 08th day of January 2021

Review Application No. 330/00010 of 2020
In
Original Application No. 330/00479 of 2020

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Anand Mathur, Member (A)

Rohit Raj, age about 29 years, S/o Shri Upendra Narayan Singh, R/o 62/259-A, Mustafa Quarter, Agra Cantt (UP) Pin Code – 282001.

. . .Applicant

By Adv : Shri Pradeep Kumar Mishra
Shri Rajesh Kumar

V E R S U S

1. Union of India through General Manager, North Central Railway, Headquarters Office, Allahabad.
2. Divisional Railway Manager, North Central Railway, DRM's Office, Agra.
3. Senior Divisional Personnel Officer, North Central Railway, DRM's Office, Jhansi.
4. Senior Divisional Personnel Officer, North Central Railway, DRM's Office, Agra.
5. Senior Divisional Electrical Engineer (OP), North Central Railway, DRM's Office, Agra.

. . .Respondents

By Adv:

O R D E R

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

The instant Review Application has been filed by the applicant – Rohit Raj in OA No. 479/2020 decided by this Bench, vide order dated 01.12.2020.

2. We have perused the review application and the order dated 01.12.2020, passed by us in aforesaid OA.

3. The only ground taken in the Review Application by the learned counsel for the applicant is that while deciding the OA, the facts of the case were not properly appreciated by this bench and the judgment under review has been passed on the basis of wrong appreciation of facts.

4. Apart from the aforesaid ground, no other ground has been taken by the applicant in the Review Application, to challenge the judgment under review.

5. As per well settled legal position, the scope of review is very limited and the power of review can be exercised only if there is an error apparent on the face of record, however, the applicant, in the review application has nowhere mentioned that there is any error apparent on the face of record in the judgment dated 01.12.2020.

6. Thus, a perusal of the Review Application clearly reflects that the applicant by means of the present Review Application wants to reopen the entire issue afresh. The ground taken by the applicant for review i.e. "wrong appreciation of facts" is a ground of appeal and not of review and we can not sit in appeal over our own judgement. As observed by the Hon'ble Apex Court in the case of ***Meera Bhanja vs. Nirmala Kumari Choudhury reported in (1995) 1 SCC 170***, the review proceedings cannot be considered by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC. Review petition is required to be entertained only on the ground of error apparent on the face of record. The Hon'ble Apex Court has also been pleased to observe that while deciding the review, the matter cannot be re-apprised and only typographical error apparent on record can be reviewed.

7. In another case of *Parson Devi and Others Vs. Sumitri Devi and Others* reported in (1997) 8 SCC -715, the Hon'ble Apex Court has been pleased to observe as under:-

“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 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 limited purpose and cannot be allowed to be "an appeal in disguise."*

10. *Considered in the light of this settled position we find that Sharma, J. clearly over-stepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997."*

8. Review is not appeal in disguised. *In Lily Thomas Vs. Union of India* the Hon'ble Apex Court held as under:-

“56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. 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.”

9. The Hon'ble High Court in Review Petition No. 134/2013 has been pleased to observe that “the matter cannot be reopened, re-heard or re-apprised as per law laid down by the Hon'ble Supreme Court in **1995 (1) SCC 170 Meera Bhanja (Smt.) Vs. Nirmal Kumari Chaudhari, AIR 1980 SC 647 Northern India Caterers Vs. Lt. Governor Delhi, 1998 SCD 85 (DB) U.P. Pharmacy Council Vs. Yashkaran Singh.”**

10. The scope of review is very limited and it is not permissible for the Tribunal to act as an appellate authority in respect of original order passing a fresh order and re-hearing of the matter to facilitate a change of opinion on merits. The same principle was laid down in the case of **Union of India Vs. Tarit Ranjan Das 2004 SCC (L&S) 160.**

11. In **S. Nagraj and Ors. vs. State of Karnataka and Anr., 1993 Supp (4) SCC 595**, the Hon'ble Apex Court explained the scope of review observing as under:-

“Review is permissible if there is an error of procedure apparent on the face of the record e.g. the judgment is delivered without notice to the parties, or judgment does not effectively deal with or determine any important issue in the case though argued by the parties. There may be merely a smoke-screen demasking an error simplicitor from the error apparent on the face of record.

Review literally and even judicially means re-examination or re-consideration. 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 The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under mis-apprehension of true state of circumstances has been held to be sufficient ground to exercise the power."

12. Through this review application, the review applicant wants to re-open the entire issue a fresh which is not permissible in review. We cannot sit in appeal on our own judgment by re-appreciating the facts. Review is permissible if there is an error of procedure apparent on the face of the record. The order was passed after hearing both the parties and all the points were discussed in the judgment which is again taken by the applicant in the review application as such, we find no error apparent on the face of record and the review is liable to be dismissed at this stage itself.

13. In view of the above, review application liable to be dismissed by circulation and is accordingly dismissed.

14. No order as to costs.

(Anand Mathur)
Member (A)

/pc/

(Justice Vijay Lakshmi)
Member (J)