

Open Court

Central Administrative Tribunal , Allahabad Bench,

Allahabad

Review Application No. 330/00012/2014 in
O.A. No. 330/01031/2010

This the 12th day of September, 2018

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

1. Sudama Prasad son of Koha Ram resident of Quarter No. 525 C and D Type I, Dhaniya Bagia Colony, Gaya.
2. Mohan Sharma son of Sri R.B. Takur, resident of Quarter No. 492-C, Type I, Railway Loco Colony, Gaya.
3. Ram Dahin Saw son of Derendra Saw, resident of quarter No. 586 B, Type I, Railway Loco Colony, Gaya.

Applicants/Reviewist

By Advocate: Sri A.K. Srivastava

Versus

1. Union of India through the General Manager, East Central Railway, Hajipur.
2. Divisional Railway Manager, East Central Railway, Mughal Sarai Division, Mughal Sarai.
3. Senior Divisional Personnel Officer, East Central Railway, Mughal Sarai Division, Mughal Sarai.
4. Senior Divisional Electrical Engineer (Operation) East Central Railway, Mughal Sarai.

Respondents

By Advocate: Sri Saneev Kumar Pandey

ORDER

HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)

This Review Application has been moved by the applicants against the judgment dated 20.3.2014 passed by this Tribunal in Original Application (O.A.) No. 1031/2010, whereby the O.A. was dismissed.

2. It appears that applicants were in possession of some quarters at Gaya and on their transfer to Mughal Sarai, the applicants prayed for taking over the charge of the aforesaid quarters but these quarters were not allotted to the

applicants. Railway ordered to recover the damages rent for unauthorized possession of the Railway quarters.

3. Respondents have stated that the applicants were previously transferred from Gaya to Mughal Sarai in the year 1998 and 2000 but they did not vacate the quarter allotted to them at Gaya.

4. Applicant No. 1 retained the Railway quarter from 20.11.2002 to 29.7.2005. Applicant No. 2 retained the quarter from 29.4.1998 to 1.6.2004 and applicant No. 3 retained the quarter from 28.9.94 to 10.5.2005. Respondents have further claimed that Railways are entitled to recover the damage rent for unauthorized possession of their property.

5. The matter was considered by the Tribunal and after exchange of pleadings and considering the entire dispute, the O.A. was dismissed on 20.3.2014. This judgment is under challenge before this Tribunal under this Review Application.

6. Heard Sri A.K. Srivastava, learned counsel for reviewist and Sri Sanjeev Kumar Pandey, learned counsel for respondents.

7. Learned counsel for applicants submitted that they have cited certain judgments before the Tribunal but those judgments were not considered by the Tribunal before passing of the said judgment.

8. Learned counsel for respondents has argued that review jurisdiction is very limited and it cannot be used as an appeal in disguise.

9. The Hon'ble Apex Court in the case of **Meera Bhanja vs. Nirmala Kumari Choudhury** reported in (1995) 1 SCC 170, has observed that review proceedings cannot be

considered by way of an appeal and have to be strictly construed to the scope and ambit of Order 47 Rule 1 of CPC and 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.

10. In another case of **Parsion 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 overstepped 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."

11. The Hon'ble Apex Court in the case of **Inder Chand Jain(Dead) Through Lrs, Vs. Motilal (Dead) Through Lrs. Reported in (2009) 14 SCC 663** has been pleased to observe as under:-

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

12. Review is not appeal in disguised. In **Lily Thomas Vs. Union of India** the Hon'ble Apex Court held

"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."

13. In view of the above discussion, Court is of the considered view that review applicants have not taken any new ground in the review application. The grounds which they have taken in the review application were already taken by them in the O.A. which have already been dealt with by this Tribunal.

14. In view of the above discussion, the Tribunal is of the considered view that the review applicants have failed to make out any case for reviewing of the order dated 20.3.2014 passed in O.A. No. 1031/2010. As such the Review Application is dismissed. No order as to costs.

(Justice Bharat Bhushan)
Member (J)

HLS/-