

IN THE HIGH COURT OF JUDICATURE AT PATNA
Mantu Kumar

vs.

The UoI and Others

Civil Review No. 408 of 2019

In

Civil Writ Jurisdiction Case No. 23813 of 2019

01 August, 2023

(Hon'ble Mr. Justice P. B. Bajanthri and Hon'ble Mr. Justice Jitendra Kumar)

Issue for Consideration

Whether the instant Review Petition assailing the dismissal of writ petition on account of non-maintainability is sustainable or not?

Headnotes

Code of Civil Procedure; section 114, Order 47; Scope and Limitation of the Review Jurisdiction; "Error apparent on the face of record"; Petitioner seeks review of the order whereby the writ petition of the Petitioner was dismissed on account of the fact that petition has been filed in Hindi language without accompanying any authenticated translated version in English and, as such, is non-maintainable.

Held: 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; 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 as that would be the province of a court of appeal; 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; 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; it should be something more than a mere error and it must be one which must be manifest on the face of the record;

in the present matter, undisputedly, the Petitioner had not filed English version of the writ petition which was filed in Hindi; there is no Patent or Palpable error apparent on the face of the record or any other ground for review of the order; The Petitioner, in fact, is seeking to substitute the view or opinion of the Court which is the Province of a Court of Appeal and not that of a Court exercising review jurisdiction; Review Petition, being bereft of any merit, dismissed with a cost of Rs. 5,000/-. (Para – 6, 10, 16-22)

Case Law Cited

Aribam Tuleshwar Sharma Vs. Aribbam Pishak Sharma & Ors. **(1979) 4 SCC 389**; Board of Control for Cricket in India & Anr. Vs. Netaji Cricket Club & Ors., **(2005) 4 SCC 741**; Inderchand Jain through LRS Vs. Motilal Through LRS, **(2009) 14 SCC 663**; Rajendra Kumar Vs. Rambai **(2007) 15 SCC 513**; S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, **(2009) 10 SCC 464**; Shanti Conductors Private Limited Vs. Assam State Electricity Board and Ors., **(2020) 2 SCC 677**; Sasi (Dead) through Legal Representatives Vs. Aravindakshan Nair and Ors., (2017) 4 SCC 692; Sow Chandra Kante & Anr. Vs. Sheikh Habib, **(1975) 1 SCC 674**; M/s Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, **(1980) 2 SCC 167****Relied Upon.**

List of Acts

Constitution of India; Code of Civil Procedure

List of Keywords

Review Jurisdiction; Miscarriage of Justice; Grave and Palpable Errors; New and Important Matter or Evidence; Error Apparent on the Face of the Record; Power of Review vs. Appellate Powers; Province of a Court of Appeal.

Case Arising From

Order dated 02.12.2019 passed by the Division Bench of Hon'ble Patna High Court in Civil Writ Jurisdiction Case No. 23813 of 2019.

Appearances for Parties

For the Petitioner/s: Mr. Indradeo Prasad

For the Opposite Party/s: Mr. Pushkar Narain Shahi (AAG 6)

Headnotes Prepared by Reporter: Ghanshyam

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL REVIEW No. 408 of 2019

In

Civil Writ Jurisdiction Case No. 23813 of 2019

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Mantu Kumar, S/o Late Ramchandra Singh, Vyakhayata - Jantu Vigyan
Vibhag, Ramroop Prasad Inter High School Bhelwara, Masaurhi, District-
Patna, permanent Address Old Jakkanpur, Kaushalya Bhawan, Post G.P.O.
P.S. Gardanibagh, District- Patna, Pincode - 800001.

... .. Petitioner/s

Vs.

1. The Union of India through the Home Secretary, Govt. of India, New Delhi.
2. The State of Bihar, through the Chief Secretary, Govt. of Bihar, patna.
3. The Secretary General Mantrimandal Sachivalay Vibhag, Govt. of Bihar,
Patna.
4. Director cum additional Secretary Mantrimandal Sachivalaya (Rajyabhasa)
Vibhag, Govt. of Bihar, Patna.
5. Rastriya Sanyojak, Bhartiya Bhasa Abhiyan, New Delhi.
6. General Secretary, Bhatiya Bhasa Aandolan, Kadipur Delhi, P.S.- Swaroop
Nagar, District- North Delhi.
7. Director, Hindi Sewa Nidhi, Itawa, Uttar Pradesh.
8. Registrar Genral, Patna High Court, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Indradeo Prasad
For the Opposite Party/s : Mr. Pushkar Narain Shahi (AAG 6)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)



Date : 01-08-2023

The present Review Petition has been filed to review the Order dated 02.12.2019 passed by the Division Bench of this Court in Civil Writ Jurisdiction Case No. 23813 of 2019, whereby the Writ Petition of the Petitioner was dismissed *in limine* on account of non-maintainability.

2. Hence the question is whether this Court can review the said Order under Civil Review Jurisdiction.

3. Before we proceed to consider the submission of the Petitioner for review, it is imperative to examine the Statutory Provisions and Case Laws to know what is scope and limitation of the Review Jurisdiction.

4. Section 114 of the Code of Civil Procedure deals with substantive power to Review a decree or order. This Section reads as follows:

“114. Review. - Subject as aforesaid, any person considering himself aggrieved,

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”



5. This Section, however, does not refer to any conditions or limitation in regard to exercise of Review Jurisdiction. However, Order 47 of Civil Procedure Code deals with procedure as well as conditions and limitations of Review Jurisdiction. Order 47 reads as follows:

“ 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 whom 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 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.]”

6. Coming to Case Laws, we find that in **Aribam Tuleshwar Sharma Vs. Aribbam Pishak Sharma & Ors.** as reported in **(1979) 4 SCC 389**, **Hon'ble Apex Court** in paragraph 3 of the Judgment has observed that 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.

7. In Board of Control for Cricket in India & Anr. Vs. Netaji Cricket Club & Ors., as reported in **(2005) 4 SCC 741**, **Hon'ble Apex Court** in paragraph 88 has observed that the jurisdiction of the High Court in entertaining a review application cannot be said to be *ex facie* bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit. **Hon'ble Supreme Court** has further observed in paragraph 90 of the Judgment that 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. It has further been observed in paragraph 90 of the Judgment that 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 therefor. 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 are 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*".

8. Hon'ble Supreme Court in Inderchand Jain through LRS Vs. Motilal Through LRS, as reported in (2009) 14 SCC 663 has observed in Para 8 that an application for review would lie *inter alia* when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In the same para, **Hon'ble Apex Court** has referred to **Rajendra Kumar Vs. Rambai** as reported in (2007) 15 SCC 513, wherein it has been observed in para 6 that limitations of exercise of the power to review are well settled. The first and foremost requirement of entertaining a Review Petition is that the order, review of which is sought, suffers from any error being apparent on the face of



the record and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed. In para 10 of **Inderchand Jain (supra)**, **Hon'ble Supreme Court** has further observed that it is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order. It has also been observed that review is not an appeal in disguise. **Hon'ble Apex Court** has also referred to **Lily Thomas Vs. Union of India**, as reported in **(2000) 6 SCC 224**, wherein **Hon'ble Supreme Court** in paragraph 56 has observed that 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 as review cannot be treated like an appeal in disguise.

9. Hon'ble Apex Court in S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, as reported in **(2009) 10 SCC 464** has observed in paragraph no. 11 of the judgment that 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.

10. Explaining “Error apparent on the face of record”, **Hon’ble Supreme Court** in paragraph 12 of **S. Bagirathi Ammal Case (supra)** has observed that 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 applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing 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 right by reviewing the order.

11. In Shanti Conductors Private Limited Vs. Assam State Electricity Board and Ors., as reported in **(2020) 2 SCC 677**, the **Hon'ble Apex Court** has referred to **Parsion Devi Vs. Sumitri Devi**, as reported in **(1997) 8 SCC 715**, wherein the **Hon'ble Supreme Court** in paragraph 9 has observed that 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. It has further been observed by **Hon'ble Apex Court** in **Parsion Devi case (supra)** that 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.”

12. In Sasi (Dead) through Legal Representatives Vs. Aravindakshan Nair and Ors., as reported in **(2017) 4 SCC 692**, the **Hon'ble Supreme Court**, quoting Rule-1 of Order 47 CPC has observed that the grounds enumerated therein are specific and the principles for interference in exercise of review jurisdiction are well settled. The Court passing the order is entitled to review the order, if any of the grounds specified in the aforesaid provision are satisfied. **Hon'ble Apex Court** further referred to **Tungabhadra Industries Limited Vs. State of A. P.**, as reported in **AIR 1964 SC 1372**, wherein **Hon'ble Supreme Court** in paragraph 11 has observed that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

13. In Sow Chandra Kante & Anr. Vs. Sheikh Habib, as reported in **(1975) 1 SCC 674**, **Hon'ble Apex Court** qua Justice V. R. Krishna Iyer has observed that a review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition,



through different Counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of Counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for Counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. Hon'ble Apex Court expressed concern for conservation of judicial time for maximum use and also expressed regret over frequent phenomenon of repeat performance with the review label as passport.

14. In M/s Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, as reported in (1980) 2 SCC 167, **Hon'ble Supreme Court** in paragraph 8 has observed that whatever be the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in



earlier by judicial fallibility.

15. The Jurisdiction of Civil Review may be summarized as follows, as approved by **Hon'ble Apex Court** in **Inderchand Jain case (supra)** in Para 33:

“33.

(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 CPC.

(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 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."

16. Now, coming to the case at hand, we find that the Petitioner seeks review of the order passed in C.W.J.C. No. 23813 of 2019, whereby the writ petition of the Petitioner was dismissed on account of non-maintainability, holding as follows:

*“ In view of law laid down by the Full Bench of this Court reported in **Krishna Yadav vs. State of Bihar; 2019(2)PLJR 809**, more so paragraph nos. 79, 133, 138*



and 139, we notice that the present petition has been filed in Hindi language without accompanying any authenticated translated version in English, is not maintainable. As such it stands dismissed.”

17. The submission on behalf of the Petitioner is that the Court has failed to properly appreciate the **Krishna Yadav case (supra)** while dismissing the Petition.

18. In **Krishna Yadav case (supra)**, **Hon'ble Full Bench** has held that so long as the Notification dated 9th of May, 1972 is not modified, rescinded or substituted in any form, a petition under Article 226 and 227 of the Constitution of India or a tax reference can be filed in Hindi but it will have to be accompanied by an English version as well which shall be the authentic version of the petition for all legal purposes so long as the Notification dated 9.th of May 1972 stands.

19. Undisputedly, the Petitioner had not filed English version of the writ petition which was filed in Hindi. Hence, applying the ratio of **Krishna Yadav case (supra)**, the **Hon'ble Division Bench** of this Court was pleased to dismiss the writ petition of the Petitioner as not maintainable.

20. Needless to say that the Petitioner has not made out any ground for review of the order dated 02.12.2019, passed in C.W.J.C. No. 23813 of 2019 as there is no Patent or Palpable



error apparent on the face of the record or any other ground for review of the order.

21. The Petitioner, in fact, is seeking to substitute the view or opinion of the Court which is the Province of a Court of Appeal and not that of a Court exercising review jurisdiction. The Petitioner, as such, has filed an appeal in disguise wasting judicial time of the Court with a huge backlog of dockets. The time could have been otherwise utilized for disposal of other pending cases of the litigants waiting in queue.

22. Hence the Review Petition being bereft of any merit is dismissed and a cost of Rs. 5,000/- (five thousand) is imposed upon the Petitioner for filing the frivolous review petition, the cost to be remitted in Patna High Court Legal Services Committee, Patna within one month of the order.

23. Re-list this matter on 05.09.2023 in the event of non-remittance of cost in the stipulated time.

(Jitendra Kumar, J)

(P. B. Bajanthri, J)

skm/chandan/-

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