Reserved on 07.07.2023
Delivered on 31.07.2023

Court No. - 10

Case :- CIVIL MISC REVIEW APPLICATION No. - 41 of 2023
Applicant :- M/S Vaid Organics And Chemical Industries Ltd. Lko. Thru. Its Director Swarn Singh
Opposite Party :- State Of U.P. Thru. Secy. Deptt. Of Industries U.P. Civil Secrt. Lko. And Others
Counsel for Applicant :- Piyush Kumar Agarwal,Akhilesh Kumar Kalra
Counsel for Opposite Party :- Kartikey Dubey

Hon'ble Mrs. Sangeeta Chandra,J.
Hon'ble Manish Kumar,J.

1. This Review Application has been filed by the applicant praying for review of judgement and order dated 22.02.2023 passed by us.

2. It has been argued by Sri Sandeep Dixit, learned Senior Advocate assisted by Sri Piyush Kumar Agrawal for the applicant that U.P. Small Industries Development Corporation (hereinafter referred to as 'the respondent') was incorporated as a Company on 29.03.1961 under the Companies Act and it was only in 2018 that the respondent has been accorded the status of a Statutory Authority by the U.P. State Industrial Development Corporation Limited (Transfer of Assets and Liabilities) Act 2018 which was published in the Gazette on 10.09.2018, and enforced with effect from 27.06.2018. Till 27.06.2018, it continued to be a company incorporated under the Companies Act and did not have the status of a Statutory Authority. On account of the

said fact, an error apparent on the face of the record has occurred in the judgement and order dated 22.02.2023 in so far as we have considered UPSIDC to be a Statutory Authority. Also, at the point in time when notice of cancellation of lease had been issued the status of UPSIDC was that of a company and not a Statutory Authority. As such, since it was not a Statutory Authority, the judgement rendered by the Supreme Court in the case of *ITC Ltd versus State of U.P.* 2011 (7) SCC 493; and the judgement and order dated 07.01.2016 passed by Coordinate Bench in Writ-C No.68500 of 2015 (Rakesh Kumar Garg versus State of UP and others) were inapplicable to the facts of the case and since this Bench had placed reliance upon such judgements, the view taken by us is unsustainable and liable to be reviewed.

3. The learned Senior counsel has read out paragraph 30 and 31 of the judgement rendered by the Supreme Court in the case of *State of UP versus Maharaja Dharmender Prasad Singh,* 1989 (2) SCC 505, which observed as follows:-

> *"A Lessor with the best of title has no right to resume possession extra judicially by use of force, from a Lessee, even after the expiry of or the earlier cancellation of lease by forfeiture or otherwise. The use of expression "re-entry" in the lease deed does not authorise extrajudicial methods to resume possession. Under law, the possession of a Lessee, even after the expiry or its earlier cancellation is juridical possession and forcible dispossession is prohibited; a Lessee cannot be dispossessed otherwise than in due course of law – – – .."*
>
> *"31. Therefore, there is no question in the present case of the Government thinking of appropriating to itself an*

> *extrajudicial right of re-entry. Posession can be resumed by the Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly prohibited from taking possession otherwise than in due course of law."*

4. It has been argued that instead of the judgement rendered by the Supreme Court in the case of *ITC Ltd.* (supra), the judgement rendered by it in *Maharaja Dharmender Prasad Singh* (supra) would have applied to the facts of the case but such judgement was not considered at all, consequently our view is incorrect and therefore should be reviewed.

5. The learned counsel for the review applicant has placed reliance upon judgement rendered by the Supreme Court in the case of *Yashwant Sinha versus Central Bureau of Investigation and Another,* 2020 (2) SCC 338 and paragraph-78 thereof where the Supreme Court had observed as follows: –

> *"78. The view of this court in Girdhari Lal Gupta 1971(3) SCC 189 as also in Deo Narain Singh (1986) Supplement SCC 530, has been noticed to be that if the relevant law is ignored or an inapplicable law forms the foundation for the judgement, it would provide a ground for review. If a Court is oblivious to the relevant statutory provisions, the judgement would, in fact, be per in curium. No doubt, the concept of per in curium is apposite in the context of its value as a precedent, but as between the parties, certainly it would be open to urge that a judgement rendered, in ignorance of applicable law, must be reviewed. The judgement, in such a case, becomes open to review as it would betray a clear error in the decision."*

6. This Court has perused the said judgement but finds that the Supreme Court observed in paragraph 79 thus:-

> *"As regards fresh material forming basis for review, it must be of such nature that it is relevant and it undermines the verdict. This is apart from the requirement that it could not be produced despite due diligence."*

7. The learned Senior counsel for the respondents Sri Sudeep Seth assisted by Sri Kartikeya Dubey, learned counsel for the respondent, has raised a preliminary objection regarding the maintainability of the review petition and has placed reliance upon judgement rendered by the Supreme Court in *S. Madhusudhan Reddy versus V Narayana Reddy and others* 2022 SCCOnline Supreme Court 1034; where from paragraph 16 onwards the Supreme Court dealt with several judgements rendered by it on the maintainability and scope of Review Petitions and ultimately observed in paragraph 31 that no Review Application should have been entertained by the High Court. We cannot attempt to consider the law in a better fashion and in a better language than has been used by the Supreme Court. We are extracting the relevant observations as follows:-

> *"16. Section 114 of the CPC which is the substantive provision, deals with the scope of review and states as follows:*
>
> *"**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."

17. The grounds available for filing a review application against a judgment have been set out in Order XLVII of the CPC in the following words:

> *"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.*
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> ** * **

(emphasis supplied by us)

18. A glance at the aforesaid provisions makes it clear that a review application would be maintainable on (i) discovery of new and important matters or evidence which, after exercise of due diligence, were not within the knowledge of the applicant or could not be produced by him when the decree was passed or the order made; (ii) on account of some mistake or error apparent on the face of the record; or (iii) for any other sufficient reason.

(emphasis supplied by us)

19. In Col. Avatar Singh Sekhon v. Union of India, 1980 Supp SCC 562, this Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:

> *"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante v. Sheikh Habib this Court observed:*
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> > ***'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. ... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.'***
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> *(emphasis added)*

20. ……..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…...”

8. Referring to the judgement rendered in *Parsion Devi and others Vs. Sumitri Devi and others*, 1997 (8) SCC 715, it was observed as thus:-

> *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 this 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 added]*
>
> * * *

9. The Supreme Court further referred to its own decision in *Lily Thomas Vs. Union of India*, 2000 (6) SCC 224, 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. 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.- - - - -

58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in Sarla Mudgal case. It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the
judgment in Sarla Mudgal 1995 (3) SCC 635, case. We have also not found any mistake or error apparent on the face of the record requiring a review. ***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 must be an error of inadvertence…..."***

* * *

"It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. *The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error, cease to be mere error and become an error apparent on the face of the record? Learned Counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.*

* * *

The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively,

there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. - - -

"23. Under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power which enables the Superior Court to correct errors committed by a subordinate Court. This point has been elucidated in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. where it was held thus:

> *"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter.* ***It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.***
>
> *12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition.* ***Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."***
>
> *(emphasis added)*

"24. After discussing a series of decisions on review jurisdiction in Kamlesh Verma v. Mayawati, this Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below:

> *"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.*
>
> *The words "any other sufficient reason" has been interpreted in Chajju Ram v. Neki AIR 1922 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,.*
>
> *20.2. When the review will not be maintainable:—*
>
> *(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.

(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 re-heard and corrected but lies only for patent error.

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

25. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, 1979 (4) SCC 389, this Court was examining an order passed by the Judicial Commissioner who was reviewing an earlier judgment that went in favour of the appellant, while deciding a review application filed by the respondents therein who took a ground that the predecessor Court had overlooked two important documents that showed that the respondents were in possession of the sites through which the appellant had sought easementary rights to access his home-stead. The said appeal was allowed by this Court with the following observations:

> *"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 pulpable 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.****"*
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> *(emphasis added)*

26. In State of West Bengal v. Kamal Sengupta 2008 (8) SCC 612, this Court emphasized the requirement of the review petitioner who approaches a Court on the ground of discovery of a new matter or evidence, to demonstrate that the same was not within his knowledge and held thus:

> *"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."

(emphasis added)

27. In the captioned judgment, the term 'mistake or error apparent' has been discussed in the following words:

> *"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".***
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> *(emphasis added)*

* * * *

30. In Ram Sahu (Dead) Through LRs v. Vinod Kumar Rawat, citing previous decisions and expounding on the scope and ambit of Section 114 read with Order XLVII Rule 1, this Court has observed that Section 114 CPC does not lay any conditions precedent for exercising the power of review; and nor does the Section prohibit the Court from exercising its power to review a decision. However, an order can be reviewed by the Court only on the grounds prescribed in Order XLVII Rule 1 CPC. The said power cannot be exercised as an inherent power and nor can

appellate power be exercised in the guise of exercising the power of review.

31. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as "for any other sufficient reason". The said phrase has been explained to mean "a reason sufficient on grounds, at least analogous to those specified in the rule" (Refer : Chajju Ram v. Neki Ram and Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius)."

(emphasis supplied by us)

10. As is evident from a review of all the binding precedents by the Supreme Court in *S. Madhusudhan Reddy* (Supra), the scope of a review application is

limited. The Court may correct an error apparent on the face of the record or interfere on any other ground analogous to such ground, but it cannot correct an erroneous decision for that is the scope of appellate jurisdiction. Even if the petitioner's case is to be believed as argued that because UPSIDC was not a Statutory Authority at the time of passing of the impugned order and this Court mistakenly relied upon a judgement given by the Supreme Court in a case relating to Statutory Authority, then our judgment would be an erroneous judgement, which can be corrected by the Appellate Court and not by us sitting in review jurisdiction.

11. We also believe that we have rendered the judgement under review not only on the basis of judgement rendered in *I.T.C. Limited* (Supra). We were sitting in equitable jurisdiction under Article 226 of the Constitution and entitled to evaluate the conduct of the litigant. In this case we had found unjust retention of property which was acquired by the respondent to further industrial development in backward regions of the State and to generate employment.

The very purpose of allotment was defeated when the petitioner retained the property for more than seventeen years, that is, from 1991 upto 2008 without raising any construction on it and without starting any employment generating industry. This was like playing fraud upon the very purpose of such allotment and lease. This weighed in our mind more than any other legal issues raised. Even if allotment was cancelled and

repossession taken against the provisions of the Transfer of Property Act, this Court under exercise of its equitable and extraordinary and discretionary jurisdiction can refuse relief if no grave injustice is done to the individual litigant when weighed against the greater public good as held by the Hon'ble Supreme Court in ***A.M. Allison Vs. B.L. Sen***, **1975 SCR 359,** where it has been held that a Writ of Certiorari is discretionary; it is not issued merely because it is lawful to do so. High Courts have the power to refuse the writ if there is no failure of justice.

12. Consequently, the review application is ***rejected.***

Order Date: 31st July, 2023
Rahul

[Justice Manish Kumar] **[Justice Sangeeta Chandra]**