AFR

# THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:85168
Court No. 1

**Civil Misc. Review Applicaiton No.301926 of 2010**

**In**

**SALES/TRADE TAX REVISION No. – 225 of 2002**

**M/S Tata Steel Ltd.**

**v.**

**Commissioner Trade Tax U.P. Lucknow**

**For the Petitioners : Devashish Bharuka, SeniorAdvocate assisted by Sri Pratik J. Nagar, Advocate**

**For the Respondent : Bipin Kumar Pandey, Additional Chief Standing Counsel**

**Last heard on May 7, 2024**
**Judgement on May 13, 2024**

**HON'BLE SHEKHAR B. SARAF, J.**

**Civil Misc. Delay Condonation Application No.301923 of 2010**

1. I have perused the affidavit accompanying the delay condonation application and find that sufficient cause has been made out for condoning the delay in filing the review application. Accordingly, the delay in filing the review application is condoned.

2. The delay condonation application is allowed.

**Review Application**

3. The instant review application preferred by the Commissioner Trade Tax, U.P., Lucknow (hereinafter referred to as the 'Respondent') arises out of an order dated February 15, 2010 passed by this Court in STRE No. – 225 of 2002.

**FACT**

4. I have outlined the brief facts leading up to the instant review application below:

a. In STRE No. – 225 of 2002, the main question raised by M/S Tata Steel Ltd. (hereinafter referred to as the 'Revisionist') was "whether in view of the definition of 'purchase price' under Section 2(gg) of the Uttar Pradesh Trade Tax Act, 1948 (hereinafter referred to as the 'UPTTA, 1948), the applicant having paid the amount of Rs. 5,56,81,000/- also for the purchase of plant and machinery, apparatus and equipment, the same ought to have been included in the 'Fixed Capital Investment' and the Trade Tax Tribunal was not justified in disallowing the said amount merely on the ground that the amount has been allowed as MODVAT under the Central Excise Act, 1944 (hereinafter referred to as the 'CEA, 1944). Other questions were also raised with regard to MODVAT allowed by the excise department.

b. The aforesaid question was answered by this Court vide its order dated February 15, 2010 in favour of the Revisionist.

c. Against the order dated February 15, 2010 passed by this Court, the Respondent preferred a Special Leave Petition under Article 136 of the Constitution of India before the Hon'ble Supreme Court.

d. The aforesaid Special Leave Petition was dismissed as not pressed by the Hon'ble Supreme Court vide its order dated September 9, 2010.

e. The Respondent filed the instant review application before this Court assailing the order dated February 15, 2010 passed by this Court.

**CONTENTIONS OF THE RESPONDENT**

5. Shri B.K. Pandey, learned Additional Chief Standing Counsel has made the following submissions:

i. The relevant law which was laid down by the Hon'ble Supreme Court in the case of ***Collector of Central Excise, Pune & Ors. -v- Dai Ichi Karkaria Ltd.*** reported in **1999 (33) RLT 899 (S.C.)** could not be pointed out at the time of argument before this Court.

ii. The Hon'ble Supreme Court in the aforesaid case has observed that the expression "actual value" should be construed in a sense which commercial men would understand. In absence of a sttatutory definition for determining the "actual value", the rule of accountancy has to be adopted. MODVAT credit has to be excluded from the value of capital goods as per the guidance note dated March 16, 1995 issued by the ICAI. The same principle also applies in the present case and MODVAT has to be excluded while determining the actual investment made by the dealer in plant and machinery.

iii. A similar controversy came up before the Hon'ble Supreme Cour in ***Commissioner of Trade Tax -v- M/s Kajaria Cements Ltd.*** reported in **(2005) 11 SCC 149**. while considering fixed capital investment for grant of exemption under notification dated February 21, 1996. The Hon'ble Supreme Court relied upon "purchase price" as defined under Section 2(gg) of the UPTTA, 1948.

iv. The law of the land as propounded by the Hon'ble Supreme Court in the aforementioned judgments could not be placed before this Court, hence the present review application is being filed herewith for kind consideration before this Court.

v. On the facts and circumstances stated above, it is absolutely necessary in the interest of justice that the judgment passed by this Court on February 15, 2010 be reviewed, and the present application filed by the Respondent be allowed and the appropriate order be passed in accordance with law, otherwise the Respondent would suffer irreparable loss and injury.

**CONTENTIONS OF THE REVISIONIST**

6. Shri Devashish Bharuka, learned Senior Counsel assisted by Shri Pratik J. Nagar, learned counsel appearing on behalf of the Revisionist has made the following submissions:

i. The Respondent had challenged the main judgment of this Court dated February 15, 2010 before the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 13259 of 2010. The same was withdrawn by the Respondent on the ground that, the "*the main question of law, which arose from the order passed by the Trade Tax Tribunal, U.P., has not been dealt with in the impugned judgment and, therefore, the petitioner would like to file a review application before the High Court*". Accordingly, the Special Leave Petition was dismissed by the Hon'ble Supreme Court as *'not pressed*'.

ii. In view of the aforesaid liberty, the Respondent has filed the instant review petition. However, instead of pointing out as to which 'main question of law' has not been dealt with by this Court in the main judgment dated February 15, 2010, the Respondent has taken a completely different stand in the instant review application. It has been averred that, "*the relevant law which could not be pointed out at the time of argument before this Hon'ble Court was the law laid down by the Apex Court"*. Further, the Respondent also admits that the question of law has been answered by this Court. Thus, the very basis on which liberty was sought from the Hon'ble Supreme Court to file review petition stands obliterated by the averments of the Respondent itself.

iii. The review petition cannot be said to be maintainable on the basis of the sole ground taken by the Respondent. It is well settled that failure to place judgments cannot be a ground for review. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in ***Dokka Samuel -v- Dr Jacob Lazarus Chelly*** reported in **(1997) 4 SCC 478**.

iv. Furthermore, the limited scope of review petition requires 'an error apparent on the face of the record'. It is an admitted position that the two judgments referred to by the Respondent were not even placed before this Court and therefore, are not a part of the record. The basic requirement of 'error apparent on the face of the record', therefore is not even fulfilled in the present review petition.

v. Further, the Hon'ble Supreme Court has in ***Arun Dev Upadhyaya -v- Integrated Sales Service Limited*** reported in **(2023) 8 SCC 11** has reiterated the well-settled principles of review.

vi. The grounds taken in the present review petition are nothing but an appeal in the guise of a review petition. The attempt of the Respondent to rely upon two judgments of the Hon'ble Supreme Court to reopen issues already decided on merits by this Court is nothing but inviting this Court to sit in appeal over its own order.

vii. In view of the aforesaid, it is submitted that this Court may be pleased to dismiss the review petition with costs.

**ANALYSIS AND CONCLUSION**

7. I have heard the learned counsel appearing for the parties and perused the materials on record.

8. Before delving into the merits of the instant review petition, it would be prudent on my part to lay thread bare the principles governing the exercise of review jurisdiction.

9. Justice V.R. Krishna Iyer, as eloquent as ever, encapsulated the scope of review jurisdiction in ***Northern India Caterers (India) Ltd. -v- Ltd. Governor of Delhi*** reported in **(1980) 2 SCC 167** as follows:

> *"A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result."*

10. In its judgment in ***Aribam Tuleshwar Sharma -v- Pishak Sharma*** reported in **(1979) 4 SCC 389**, the Hon'ble Supreme Court propounded that review power and appellate power are inherently distinct. While the

appellate power enables the courts to rectify all manners of errors in the judgment or order under challenge, review power does not. Relevant paragraph is extracted herein below:

> "*3. The Judicial Commissioner gave two reasons for reviewing his predecessor's order. The first was that his predecessor had overlooked two important documents Exs. A-1 and A-3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909] 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.*"
>
> **(Emphasis Added)**

11. At this juncture, I consider it prudent to refer to Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC, 1908') which delineates the boundary within which the review jurisdiction is to be exercised: -

> *"(a) From the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant;*
>
> *(b) Such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and*

> *(c) On account of some mistake or error apparent on the record or any other sufficient reason."*

12. Recently, in ***Arun Dev Upadhyaya (supra)***, the Hon'ble Supreme Court reiterated that review power is to be exercised strictly within the confines of Order 47 Rule 1 of CPC, 1908. Relevant paragraphs are reproduced herein below:

> *"34. In another case between Shanti Conductors (P) Ltd. v. Assam SEB [Shanti Conductors (P) Ltd. v. Assam SEB, (2020) 2 SCC 677 : (2020) 2 SCC (Civ) 788] , this Court observed that scope of review under Order 47 Rule 1 read with Section 114CPC is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue questions which have already been addressed and decided. It was further observed that 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 record.*
>
> *35. From the above, it is evident that a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order 47 Rule 1CPC. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions."*

13. In ***Parsion Devi -v- Sumitri Devi*** reported in **(1997) 8 SCC 715**, the Hon'ble Supreme Court espoused that the power under Order 47 Rule 1 of the CPC, 1908 does not allow for an erroneous decision to be "reheard and corrected." Relevant paragraphs are extracted below:

> "*7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P. [AIR 1964 SC 1372 : (1964) 5 SCR 174] (SCR at p. 186) this Court opined:*
>
> > *"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 characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."*
>
> *(emphasis ours)*
>
> *8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury [(1995) 1 SCC 170] while quoting with approval a passage from Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389] 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.*
>
> *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 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".*"
>
> **(Emphasis Added)**

14. In its judgment in ***S. Madhusudhan Reddy -v- Narayana Reddy*** reported in **2022 SCC OnLine SC 1034**, the Hon'ble Supreme Court reiterated the limited grounds on which a review petition can be assailed under the provisions of the CPC, 1908. The relevant paragrph reads as under:

> *"3. The Judicial Commissioner gave two reasons for reviewing his predecessor's order. The first was that his predecessor had overlooked two important documents Exs. A-1 and A-3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909] 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."*
>
> (Emphasis Added)

15. In the cauldron of litigation, where passions run high and stakes are higher still, the temptation to misuse review jurisdiction may be great. Yet, it is a temptation that must be resisted at all costs, for to succumb to it would be to betray the very essence of justice itself. Review jurisdiction is not a tool for the litigious or the disgruntled, it is a mechanism for safeguarding the integrity of the judicial process, for ensuring that justice remains blind to all but the merits of the case. Wielding the power of review jurisdiction carries a weighty burden – one that demands unyielding diligence and meticulousness. Courts must resist the siren call of extraneous influences or the temptation to revisit contentious issues. The realm of review jurisdiction is a realm of perpetual tension – a tension between the imperative of finality and the exigency of correction, between the sanctity of precedent and the call for innovation. It is a tension that demands a delicate balancing act – one that calls for the wisdom of Solomon and the impartiality of Lady Justice herself. And therefore, review jurisdiction is not a weapon to be wielded recklessly but a shield to safeguard the sanctity of the legal process.

16. Unlike the fabled sword of Damocles, review jurisdiction cannot be allowed to be hung precariously above the head of litigants, threatening the delicate balance of legal certainty. Order 47 Rule 1 of the CPC, 1908 stands as a sentinel – a guardian of the gates, permitting entry only to those deemed worthy by the stringent criteria it lays forth. It serves as a bulwark against the tide of caprice and whim.

17. In **Shri Ram Sahu (Dead) through Legal Representatives and Others -v- Vinod Kumar Rawat and Others** reported in **(2021) 13 SCC 1**, the Hon'ble Supreme Court after examining precedents reiterated and delineated the principles of review –

> *"7.1. In Haridas Das v. Usha Rani Banik [Haridas Das v. Usha Rani Banik, (2006) 4 SCC 78] while considering the scope and ambit of Section 114CPC read with Order 47 Rule 1CPC it is observed and held in paras 14 to 18 as under :*
>
> > *"14. In Meera Bhanja v. Nirmala Kumari Choudhury [Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170] it was held that :*
> >
> > > *'8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court in Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389] speaking through Chinnappa Reddy, J. has made the following pertinent observations :*
> > >
> > > > *"3. ... It is true ... there is nothing in Article 226 of the Constitution to preclude the 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."*

*15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought : (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.*

*16. In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389] , this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under : (SCC p. 390, para 3)*

> *'3. It is true as observed by this Court in Shivdev Singh v. State of Punjab [Shivdev Singh v. State of Punjab, AIR 1963 SC 1909] 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.'*

*17. The judgment in Aribam case [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389] has been followed in Meera Bhanja [Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170] . In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137] were also noted :*

> *'17. ... An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.'*

*18. It is also pertinent to mention the observations of this Court in Parsion Devi v. Sumitri Devi [Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715] . Relying upon the judgments in Aribam [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389] and Meera Bhanja [Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170] it was observed as under:*

> *'9. Under Order 47 Rule 1CPC 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 1CPC. In exercise of the jurisdiction under Order 47 Rule 1CPC 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'.'*

*7.2. In Lily Thomas v. Union of India [Lily Thomas v. Union of India, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056] , it is observed and*

*held 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. It is further observed in the said decision that the words "any other sufficient reason" appearing in Order 47 Rule 1CPC must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in Chhajju Ram v. Neki [Chhajju Ram v. Neki, 1922 SCC OnLine PC 11 : (1921-22) 49 IA 144 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Mar Poulose Athanasius [Moran Mar Basselios Catholicos v. Mar Poulose Athanasius, AIR 1954 SC 526] .*

*7.3. In Inderchand Jain v. Motilal [Inderchand Jain v. Motilal, (2009) 14 SCC 663 : (2009) 5 SCC (Civ) 461] in paras 7 to 11 it is observed and held as under :*

> *"7. Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a civil court and consequently by the appellate courts. The words "subject as aforesaid" occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under : (Kamal Sengupta case [State of W.B. v. Kamal Sengupta, (2008) 8 SCC 612 : (2008) 2 SCC (L&S) 735] ,*
>
> > *'17. The power of a civil court to review its judgment/ decision is traceable in Section 114CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1CPC, which reads as under:*
> >
> > *"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 of the court which passed the decree or made the order." '*

*8. 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 Rajender Kumar v. Rambhai [Rajender Kumar v. Rambhai, (2007) 15 SCC 513 : (2010) 3 SCC (Cri) 584] this Court held :*

> *'6. The limitations on exercise of the power of 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 apparent on the face of the order 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.'*

*9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.*

*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. 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.*

*11. Review is not appeal in disguise. In Lily Thomas v. Union of India [Lily Thomas v. Union of India, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056] this 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.'*

> *8. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. In Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji [Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844] , this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.*
>
> > *9. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by this Court in T.C. Basappa v. T. Nagappa [T.C. Basappa v. T. Nagappa, AIR 1954 SC 440] . It is held that such an error is an error which is a patent error and not a mere wrong decision. In Hari Vishnu Kamath v. Syed Ahmad Ishaque [Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1955) 1 SCR 1104 : AIR 1955 SC 233] , it is observed as under : (SCC p. 244, para 23)*
> >
> > > *"23. ... 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? The 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."*

18. Nobody is perfect. This timeless adage resonates deeply within the realm of the judiciary, where judges, though addressed with titles like "Your Lordships", are not immune to fallibility. Recognizing this fundamental truth and to prevent miscarriage of justice, High Courts, as Courts of Record under Article 215 of the Constitution of India possess the inherent power to review their own orders. However, in recent times, there has been a misconception that review jurisdiction is tantamount to an appeal – a second chance to argue an already settled matter. At its core, review jurisdiction is a solemn duty bestowed upon the High Courts to rectify errors that may have crept into their judgments. It is not an avenue for re-argument or a platform for dissatisfied litigants to reiterate their grievances. Instead, it serves as a

bulwark against miscarriage of justice, providing a mechanism for the correction of judicial fallibility. Judges, like all human beings, are liable to err. Thus, review jurisdiction stands as a sentinel against the tyranny of erroneous judgments, upholding the integrity of the judicial process.

19. Yet, the misconception persists that review jurisdiction offers litigants a second bite at the cherry – a chance to reopen settled matters and re-litigate issues already adjudicated upon. This notion not only undermines the finality of judgments but also erodes the sanctity of judicial pronouncements. As Justice Felix Frankfurter once remarked, "Wisdom too often never comes, and so one ought not to reject it merely because it comes late." Review jurisdiction, when exercised judiciously, embodies this wisdom – it is a beacon of hope for those aggrieved by manifest injustice, offering solace in the face of adversity. At its core, review jurisdiction is about scrutiny, not re-litigation. It is about examining the record of proceedings with a discerning eye, searching for errors of law, fact, or procedure. It is not a second chance for litigants to present their case anew or to introduce fresh evidence. Rather, it is a solemn duty entrusted to the judiciary, a duty to ensure that justice is not just done, but seen to be done.

20. The jurisprudence surrounding the power of review is as intricate as it is unequivocal. It delineates a stringent criterion wherein an appellant, desiring to invoke the mechanism of review against a judgment or order, must demonstrate the unearthing of new and pivotal matter or evidence – a revelation that, despite exhaustive and diligent inquiry, remained elusive to the court's purview. This requirement embodies the essence of due diligence, mandating not merely a cursory glance but a thorough excavation into the depths of legal enquiry. Review jurisdiction is not to be misconstrued as a second bite at the proverbial apple, granting aggrieved parties an opportunity to rehash matters already adjudicated upon. In review jurisdiction, courts act as third umpires. Their authority is circumscribed by the confines of the record before them, limiting their purview to errors glaringly evident on the face of record. Should the pursuit of rectifying an

alleged error necessitate a deeper and thorough examination, it stands to reason that such an error cannot be deemed 'apparent' in the truest sense.

21. Coming to the merits of the instant review, the ground taken by the Respondent that important judgments of the Hon'ble Supreme could not be submitted before this Court, does not merit the exercise of the power of review since the Respondent failed to establish that despite exercise of proper due diligence, the aforesaid judgments could not be brought to light. In any case, as held by the Hon'ble Supreme Court in ***Dokka Samuel (supra)***, failure to produce a judgment would not tantamount to an error apparent on the face of the record. Relevant paragraph from the aforesaid judgment is extracted herein:

> *"4. It is seen that by an order passed by this Court on 24-11-1995, liberty was given to the appellant, in the event of the High Court reviewing the order on merits against him, to agitate his rights in this Court. The question is whether the High Court was justified in reviewing the earlier order and reversing the finding recorded by the appellate court. It is not in dispute that the sale deed is for a small sum of Rs 300 and odd and that the property sold commands good market value. The question arises whether the document was a sale deed or is only a document for collateral purpose. The respondent himself in an earlier suit had pleaded that it was an agreement of sale. In view of such an admission, the High Court has wrongly reversed the decree of the appellate court holding the transaction to be a real sale. In the second appeal, the High Court confirmed, in the first instance, the decree of the appellate court. Subsequently, the High Court has reviewed the judgment and reconsidered the matter holding that relevant precedents were not cited. Since this Court had given liberty to raise the questions of reviewability of the judgment of the High Court, the question arises whether the High Court could not have embarked upon appreciation of evidence and considered whether there was an error apparent on the face of the record. It was contended before the learned Single Judge that various decisions were not cited; proper consideration was paid; in fact the sale deed was acted upon; and that there was no proof that the sale was not for valid consideration. The omission to cite an authority of law is not a ground for reviewing the prior judgment saying that there is an error apparent on the face of the record, since the counsel has committed an error in not bringing to the notice of the court the relevant precedents. In fact, since the respondent had claimed that it is not a sale deed but was executed for collateral purpose, it was for the respondent to establish that the*

> *sale was for real consideration and he had a valid sale deed duly executed by the appellant. The High Court wrongly placed the burden on the appellant and reviewed the order and heard the matter on merits. The entire approach of the learned Single Judge is not correct in law."*

22. Mere failure to cite a judgment does not, in and of itself, render the original judgment flawed. Review jurisdiction is not a panacea for addressing every perceived deficiency or oversight in the original judgment; rather it is a narrow avenue reserved for rectifying errors glaringly evident on the face of the record. Failure to cite a particular judgment does not automatically invalidate the reasoning or merit of the decision under question.

23. What is also surprising to me is that although the ground taken by the Respondent to withdraw their Special Leave Petition before the Hon'ble Supreme Court was liberty to approach this Court since as per them the main question of law was not decided by this Court in its judgment on February 15, 2010, the said ground does not find any mention in the instant review application. The failure to articulate consistent grounds for seeking review calls into question the bona fides of the Respondent's application. One would expect that if a significant aspect of the case was left unaddressed in a prior judgment, as alleged by the Respondent before the Hon'ble Supreme Court, would be foremost among the reason cited for seeking review. This inconsistent approach adopted by the Respondent could not be explained by them before this Court.

24. At this point, my mind goes back to the elegant words of Justice Krishna Iyer in ***P.N. Eswara Iyer and Ors. -v- Registrar, Supreme Court of India*** reported in **(1980) 4 SCC 680**. Since the instant judgment began with his words of wisdom, it is only fair that it ends with them too:

> *"..... unchecked review has never been the rule. It must be supported by proper grounds. Otherwise, every disappointed litigant may avenge his defeat by a routine review adventure and thus obstruct the disposal of the 'virgin' dockets waiting in the long queuefor preliminary screening or careful final hearing....."*
>
> Justice Krishna Iyer further stated:

> *"Even otherwise, frivolous motions for review would ignite the 'gambling' element in litigation with the finality of judgments even by the highest court, being left in suspense. If, every vanquished party has a fling at 'review' lucky dip and if, perchance, notice were issued in some cases to the opponent the latter-and, of course, the former, -would be put to great expense and anxiety. The very solemnity of finality, so crucial to judicial justice, would be frustrated if such a game were to become popular."*

25. In light of the aforesaid discussion and law, this Court finds no merit in the instant review application preferred against the order dated February 15, 2010. Accordingly, the same is dismissed.

26. There shall be no order as to the costs.

**Date :** 13.05.2024
Kuldeep

(Shekhar B. Saraf, J.)