

Item No. 01 & 02

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

**M.A. No. 99/2023(PB)
In
Original Application No. 638/2022
With
(I.A. No. 772/2023)**

Anand Singh & Ors.

Applicant(s)

Verse

State of Uttarakhand & Ors.

Respondent(s)

Date of Hearing: **12.02.2024**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

For Applicant(s):

Mr. Sharique Hussain, Adv.
Ms. Romila Joshi, Adv.

For Respondent(s):

None.

ORDER

1. This miscellaneous application has been moved to modify the order dated 11.07.2023 or reviewing the observations in the order or recall or review the order quoted above passed in Original Application No. 638/2022.
2. This Original Application No. 638/2022 was been filed for the following relief:-
 - a) Direct/order closure of the Saw Mill and Iron net and barricading unit consenting without Consent to operate under Water Act, 1974 and Air Act 1981.
 - b) Direct the relocation of the saw mill from the residential area to an appropriate location in accordance with

Directions of the Hon'ble Supreme Court in C.W.P. No 202 of 1995;

- c) Impose environment compensation for illegal operation of the Saw Mill and Iron net and barricading unit;
- d) Direct closure of the saw mills operating in violation of Uttarakhand Establishment and Regulation of Saw Mills (Sixth Amendment) Rules, 2017.

3. Contention of the learned Counsel for the applicant is that Saw Mill and Iron net and barricading unit is in operation illegally in a residential complex by one Mr. Munendra Singh Matura in the middle of the residential area adjacent to houses and Government Women Hostel at Gyansu in Uttarkashi District, Uttarakhand. The Saw Mill continuously runs throughout the day and at night, generating enormous noise from the woodcutters and the saw dust from the woods is causing huge pollution in the pristine and clean environment of the neighbourhood. Further, Mr. Munendra Matura, instead of closing down the illegal Saw Mill started another illegal activity i.e. Iron net and Barricading unit at the terrace of his residential complex. The Iron net and barricading activity not only causes enormous noise but also emits poisonous fumes from the welding activity which is entering the home of the Applicants and adversely affecting the health of the people residing therein.

4. The matter has been taken up by this Tribunal on 12.09.2022 and the Regional Officer, Uttarakhand State PCB was directed to submit a report. Notices were also issued to the respondents to submit their reply.

5. The application was heard on 11.07.2023 and on the basis of the report submitted by the respondents the application was finally disposed of in the following way wherein Para 4 to 9 are quoted below:-

“1. In compliance thereof, CPCB (Respondent No. 2) has filed the reply as follows:-

“1.....As per categorization of industrial sectors "Saw Mills" has been categorized into "Green" category under S. No. 42 of Final Document on Revised Classification of Industrial Sectors. A copy of CPCB direction dated 07.03.2016 along with details of CPCB categorization is enclosed at Annexure-1. Further, Industrial units covered under Red, Orange, Green categories are not 'allowed to operate without prior permission of State Pollution Control boards (hereinafter referred to as "SPCBs") and Pollution Control Committees (hereinafter referred to as "PCCs"). SPCB is the regulatory agency for pollution control in the state and to issue Consent to Establish (hereinafter referred to as "CTE") and Consent to Operate (hereinafter referred to as "CTO") for any industrial establishment.

xxx.....xxx.....xxx

9.....Respondents No. 6 and 7 have established a saw mill and also there is a setup on the roof of the house for manufacturing iron net and barricading and that after report of Tehsildar the iron net and barricading unit was stopped but the saw mill continued to operate. In reply, it is submitted that matter is related to Tehsildar, Bhatwadi, Uttarkashi report dated 23.03.2017 and is a matter of record and need no comments from this answering Respondent No. 2.

xxx.....xxx.....xxx

22.....CPCB vide letter dated 07.03.2016 directed all SPCBs/PCCs under section 18(1)(b) of the Water Act, 1974 and Air Act, 1981 to adopt CPCB categorization along with Final Document on Revised Classification of Industrial Sectors under Red,

Orange, Green and White Categories wherein scoring methods have been explained to categorize the industrial sectors into Red, Orange and Green Category.

As per categorization of industrial sectors "Saw Mills" has been categorized into "Green" category under S. No. 42 of aforesaid Final document on Revised Classification of Industrial Sectors and Green categories of industries comes under the purview of consent mechanism. It is further submitted that SPCB is the sole responsible authority for issuance of CTE and CTO for any industrial establishment in the state and to prevent environmental pollution in the state. Local authorities and SPCB are the concern authorities to take necessary action the instant matter.

2. It is further contented that in case of violation, it is the State PCB to take further initiation and take remedial actions.

3. Uttarakhand State PCB has submitted a reply with the facts that that the Regional Office, vide letter dated 17.11.2022 directed to M/s MS Trading Company Saw Mill that in case of non compliance of rules, the Unit shall stop the production/ manufacturing operations until the unit obtained CCA from the Board; otherwise action shall be initiated against the Unit under section 33(Air of the Water Prevention and Control of pollution Act, 1974 and Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981. The noise level is found higher than the prescribed norms as monitored by officials of UKPCB on dated 27- 09- 2022. The matter was forwarded to Executive Officer, Nagar Palika Parishad, Badahat, Uttarkashi for taking cognizance in accordance with the notification issued by G.O. on dated 09-06-21, this letter was sent on 30-09-2022. The Regional Officer (Dehradun) wrote a letter dated 17.10.2022 to DFO, Uttarkashi with recommendation if the unit is operating probably without permission of Forest Department, than action

may be taken against the said unit. A true copy of the Office order dated 17.10.2022 is annexed herewith as Annexure-6.

4. *By filing the reply, learned Counsel for Respondent Nos. 6 and 7 have submitted that the present application has been filed malafidely and without any ground. It is further submitted that the answering respondents using the cheer and Devdar wood (Himalayan Subtropical pine tree) to run its unit and the said wood due to the present of oil in it does not create any dust pollution.*

5. *Further action taken report has been filed by State PCB with the facts that a Saw Machines was not found operational and it has been sealed in the presence of the representative of the Mill. It is further argued that the structure has been demolished. Since, the action has been taken by the State PCB by demolishing and closure of the unit and by dismantling the structure, thus, no further action is required to be taken by the Tribunal.*

6. *The Original Application stands disposed of accordingly.”*

7. The contention of the present applicant is that he sought to obtain permission to run the saw mill and iron bracketing unit from the premises in question. The State PCB states that once the fact relating to dismantling of structure is recorded in the order of this Tribunal they cannot act on the application of the applicants unless necessary clarifications in respect of order dated 11.07.2023 is not done by the Tribunal.

8. It is further submitted that the applicant wants to operate this mill on his commercial plot after all environmental clearances by the authorities concerned.

9. The original application was disposed of on the basis of the report submitted by the respondents and the contention as raised by the parties concerned during the course of hearing. Nothing new has been narrated in this application and the contention of the original applicant in O.A. no. 638/2022 was that saw mill and iron net and barricading unit was in

operation illegally in a residential complex in the middle of the residential area adjacent to houses and government woman hostel at Gyanasu in Uttarakhand District Uttarakhand. The State Pollution Control Board has taken proper action according to the rules.

10. Section 114 read with O.47 R.1 of the Code of Civil Procedure, 1908 (hereinafter called C.P.C.) prescribes the limitations for entertaining a review petition. The same are; that the party filing the application for review has discovered a new and important matter or evidence after exercise of due diligence which was not within its knowledge or could not be produced by it 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. The aforesaid limitations are prescribed in a crystal clear language and before a party submits that it had discovered a new and important matter or evidence which could not be produced at the earlier stage, the condition precedent for entertaining the review would be to record the finding as to whether at the initial stage, the party has acted with due diligence. "Due" means just and proper in view of the facts and circumstances of the case (vide *A.K. Gopalan Vs. State of Madras*, AIR 1950 SC 27).

11. Some mistake or error, if made ground for review, it must be apparent on the face of record and if a party files an application on the ground of 'some other sufficient reason' it has to satisfy that the said sufficient reason is analogous to the other conditions mentioned in the said rule i.e. discovery of new and important matter or evidence which it could not discover with due diligence or it was not within his knowledge and, thus, could not produce at the initial stage. Apparent error on the face of record has been explained to include failure to apply the law of limitation to the facts found by the Court or failure to consider a particular provision of a statute or a

part thereof or a statutory provision has been applied though it was not in operation. Review is permissible if there is an error of procedure apparent on the face of the record e.g. the judgment is delivered without notice to the parties, or judgment does not effectively deal with or determine any important issue in the case though argued by the parties. There may be merely a smoke-line demarcating an error simplicitor from the error apparent on the face of record. But there cannot be a ground for entertaining the review in the former case. "Sufficient reason" may include disposal of a case without proper notice to the party aggrieved. Thus, if a person comes and satisfies the Court that the matter has been heard without serving a notice upon it, review is maintainable for the "sufficient reason" though there may be no error apparent on the face of record.

12. The expression 'any other sufficient reason' contained in O.47 R.1 Code of Civil Procedure means "sufficient reason" which is analogous to those specified immediately to it in the provision of O. 47 R. 1 CPC. In *Chhajju Ram Vs. Neki & Ors*, AIR 1922 PC 112, it was held by the Privy Council that analogy must be discovered between two grounds specified therein namely; (i) discovery of new and important matter or evidence; and (ii) error apparent on the face of record, before entertaining the review on any other sufficient ground. The same view has been reiterated in *Debi Prasad & Ors Vs. Khelawan & Ors*, AIR 1957 All. 67; and *Mohammad Hasan Khan Vs. Ahmad Hafis Ahmad Ali Khan & Anr.*, AIR 1957 Nag. 97.

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

"Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily

and judicially have been carved out to correct accidental mistakes or miscarriage of justice The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power."

14. The Court further held that the purpose of review is rectification of an order which stems from the fundamental principle that the justice is above all and it is exercised only to correct the error which has occurred by some accident without any blame. While deciding the said case the Hon'ble Supreme Court placed reliance upon a large number of judgments including in *Raja Prithwi Chand Lal Choudhury Vs. Sukhraj Rai & Ors.*, AIR 1941 FC 1; and *Rajunder Narain Rae Vs. Bijai Govind Singh* (1836) 1 MOO PC 117. The same view has been reiterated by the Hon'ble Apex Court in *Oriental Insurance Co. Ltd. & Anr. Vs. Gokulprasad Maniklal Agarwal & Anr.* (1999) 7 SCC 578.
15. A Full Bench of the Himachal Pradesh High Court, in *D. Nalagarh Dehati Co-operative Transport Society Ltd., Nalagarh Vs. Beli Ram* AIR 1981 HP 1, considered the scope of review and held that not considering an existing judgment of the Hon'ble Supreme Court may be a ground of review and for the same it placed reliance upon the judgments of the Privy Council in *Rajah Kotagiri Venkata Subbamma Rao Vs. Rajah Vellanki Venkatrama Rao*, (1900) 27 IA 197 (PC), wherein it was held that the purpose of review, inter alia, is to correct an apparent error which should not have been there when the judgment was given. The Court also placed reliance upon the judgment of the Federal Court in *Sir Hari Sankar Pal & Anr. Vs. Anath Nath Mitter & Ors.*, 1949 FC 106 wherein it was held as under :-

".....the error could not be one apparent on the face of record or even analogous to it. When, however, the Court disposes of a case without adverting to or applying its mind to a

provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of record sufficient to bring the case within the purview of O.47 R.1, Civil Procedure Code.”

16. In *Thadikulangara Pylee's Son Pathrose Vs. Ayyazhiveettil Lakshmi Amma's son Kuttan & Ors.*, AIR 1969 Ker 186, the Kerala High Court considered a review application which was filed on the ground of subsequent judgment of the Court and dismissed the same observing as under :-

“If it is borne in mind that a judicial decision only declares and does not make or change the law, although it might correct previous erroneous views of the law, a review on the basis of subsequent binding authority would not be a review of a decree which, when it was made, was rightly made, on the ground of the happening of a subsequent event.”

17. While deciding the said case, the Court placed reliance upon the judgments of the Privy Council in *Rajah Kotagiri Venkata Subbamma* (supra); *Chhajju Ram* (supra); *Bisheshwar Pratap Sahi & Anr. Vs. Parath Nath & Anr*, AIR 1934 PC 213; and on judgments of the Hon'ble Supreme Court in *M/s. A.C. Estates Vs. M/s. Serajuddin and Co. & Anr.*, AIR 1966 SC 935; and *Moran Mar Basselios Catholicos & Anr. Vs. Most Rev. Mar Poulouse Athanasius & Ors.*, AIR 1954 SC 526.

18. In *Sow. Chandra Kanta & Anr. Vs. Sheik Habib*, AIR 1975 SC 1500, the Hon'ble Apex Court dismissed a review application observing as under :

“.....thus, making it that a review proceeding virtually amounts to a rehearing. May be a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgment is a serious subject and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave of error is crept in earlier by judicial fallibility.”

19. Similar view has been reiterated by the Hon'ble Supreme Court in *Sajjan Singh & Ors Vs. The State of Rajasthan & Ors*, AIR 1965 SC 845; *Girdhari Lal Gupta Vs. D.N. Mehta & Anr*, AIR 1971 SC 2162; *M/s. Northern India Cateerers' (India) Ltd. Vs. Lt. Governor of Delhi*, AIR 1980 SC 674; *Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma & ors.*, AIR 1979 SC 1047; and *Green View Tea & Industries Vs. Collector, Golaghat & Anr* (2002) 1 SCC 109.
20. Similarly, in *Devaraju Pillai Vs. Sellayya Pillai*, AIR 1987 SC 1160, the Hon'ble Apex Court held that if a party is aggrieved of a judgment by a Court, the proper remedy for such party is to file an appeal against that judgment. A remedy by way of an application for review is entirely misconceived and if a Court entertained the application for review then it has totally exceeded its jurisdiction in allowing the review merely because it takes a different view in construction of the document.
21. In *Delhi Administration Vs. Gurdip Singh Uban & Ors.*, AIR 2000 SC 3737, the Hon'ble Apex Court deprecated the practice of filing review application observing that review, by no means, is an appeal in disguise and it cannot be entertained even if application has been filed for clarification, modification or review of the judgment and order finally passed for the reason that a party cannot be permitted to circumvent or bye-pass the procedure prescribed for hearing a review application. The Court also rejected the argument that review application should be entertained to do justice in the case, observing as under :-

"The words 'justice' and 'injustice', in our view, are sometimes loosely used and have different meanings to different persons, particularly to those arrayed on opposite sides.... Justice Cardozo said, 'The Web is tangled and obscure, shot through with a multitude of shades and colours, the skeins irregular and broken. Many hues that seems to be simple, are found, when analysed, to

be complex and uncertain blend. Justice itself, which we are wont to appeal to as a test as well as an ideal, may mean different things to different minds and at different times. Attempts to objectify its standards or even to describe them, have never wholly succeeded.”

22. In *M/s. Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh* represented by the Deputy Commissioner of Commercial Taxes, Anantapur, AIR 1964 SC 1372, the Hon’ble Apex Court held as under:-

“A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

23. In *Union of India & Ors. Vs. Mohd. Nayyar Khalil & Ors.*, (2000) 9 SCC 252, the Hon'ble Apex Court rejected the review application which was filed on the ground that the High Court had decided the case placing reliance upon the decision of the Hon’ble Supreme Court, the correctness of which had been doubted and the matter had been referred to the Large Bench of the Supreme Court. Subsequently, the Larger Bench had taken a contrary view. The review petition was dismissed on the grounds, inter alia, that the situation had not been pointed out by the counsel to the Bench when the matter was initially heard.

24. In *Subhash Vs. State of Maharashtra & Anr.*, AIR 2002 SC 2537, the Hon'ble Apex Court emphasised that Court should not be misguided and should not lightly entertain the review application unless there are circumstances falling within the prescribed limits for that as the Courts

and Tribunal should not proceed to re-examine the matter as if it was an original application before it for the reason that it cannot be a scope of review. The first and foremost requirement of entertaining a review application is that the order, review of which is sought (a) suffers from any error apparent on the face of the record, and (b) permitting the order to stand will lead to failure to justice. (Vide *Rajendra Kumar & Ors. Vs. Rambhai & Ors.*, AIR 2003 SC 2095; *Green View Tea and Industries Vs. Collector, Golaghat, Assam & Anr.*, (2004) 4 SCC 122; and *Des Raj & Ors. Vs. Union of India & Anr.*, (2004) 7 SCC 753).

25. In *Zahira Habibullah Sheikh Vs. State of Gujarat*, (2004) 5 SCC 353, the Apex Court referred to its earlier judgments in *P.N. Eswara Iyer etc. Vs. Registrar Supreme Court of India*, (1980) 4 SCC 680; *Suthendraraja Vs. State*, (1999) 9 SCC 323; *Ramdeo Chauhan Vs. State of Assam*, AIR 2001 SC 2231; and *Devender Pal Singh Vs. State of NCT of Delhi*, AIR 2003 SC 3365; and observed that review applications “are not to be filed for the pleasure of the parties or even as a device for ventilating remorselessness, but ought to be resorted to with a great sense of responsibility as well.

26. A Division Bench of the Calcutta High Court, in re: Mahamaya Banerjee, AIR 1989 Cal. 106, held that a review under O. 47 R. 1 of the Code is permissible if there had been misconception of fact and/or law by the counsel, as it will fall within the ambit of expression “sufficient reason” in O. 47 R. 1 of the Code. The Calcutta High Court proceeded with the presumption that in order to do justice, which has been denied to a party owing to patently wrong step taken by its counsel, the Court can exercise its inherent power to come to its rescue and to do justice. With all due respect, the said judgment does not lay down the correct law for the reason that it is settled legal proposition that inherent powers cannot be used by the Court where a Statute provides for a specific remedy.

27. Undoubtedly, inherent powers conferred upon the Court either under Section 151 of the Code or any other analogous provision, can be exercised by the Court to do justice or to further the cause of justice. (Vide *Manohar Lal Chopra Vs. Rai Bahadur Rao Seth Hirala*, AIR 1962 SC 527; *Union of India Vs. Ram Charan*, AIR 1964 SC 215; and *Vikas Aggarwal Vs. Anubha*, (2002) 4 SCC 468). However, inherent powers cannot be used by a Court where Statute itself provides for a remedy as held by the Hon'ble Supreme Court in *Manohar Lal Chopra (supra)*; *Arjun Singh Vs. Mohindra Kumar & Ors*, AIR 1964 SC 993; *M/s. Ramchandra & Sons Sugar Mills Pvt. Ltd., Barabanki (U.P.) Vs. Kanhayalal Bhargava & Ors.*, AIR 1966 SC 1899; *Nainsingh Vs. Koonwarjee & Ors.*, AIR 1970 SC 997; *State of West Bengal Vs. Karan Singh Vinayak & ors.*, (2002) 4 SCC 188).

28. In *Bhagwati Singh Vs. Deputy Director of Consolidation & Anr.*, AIR 1977 All. 163, the Allahabad High Court rejected the review application filed on a ground which had not been argued earlier because the counsel, at initial stage, had committed mistake in not relying on and arguing those points, observing as under:-

“It is not possible to review a judgment only to give the petitioner a fresh inning. It is not for the litigant to judge of counsel's wisdom after the case has been decided. It is for the counsel to argue the case in the manner he thinks should be argued. Once the case has been finally argued on merit and decided on merit, no application for review lies on the ground that the case should have been differently argued.”

29. The Court also considered the judgment of the Federal Court in *Mt. Jamna Kuer Vs. Lal Bahadur & Ors.*, AIR 1950 FC 131, wherein an observation has been made that review is permissible if mistake has been committed by a counsel. The Court did not follow the said judgment, observing that it was a case in which a mistake had crept in the judgment of the High Court

owing to an over-sight. Therefore, it was a case wherein review was maintainable on other grounds also and the ratio of that judgment is certainly not that review lies if a counsel commits mistake.

30. More so, the expression “discovery of new and important matter of evidence” contained in the provisions of O. 47 R. 1 CPC means, discovery of an evidence or any material which may be adduced in evidence. It cannot take it in its ambit an argument which could have been advanced by the counsel. To sum up, the substance of the said judgments is that the entire concept of writ jurisdiction is founded on equity and fairness and if the Court has committed a mistake, it should be removed entertaining a review application so that the result may not lead to miscarriage of justice, as rectification of an order stems from the fundamental principles that justice is above all. Provisions of Order XLVII Rule 1, C.P.C. permits the review even on the mistake of fact or even on ignorance of material fact. The review jurisdiction should be exercised to prevent miscarriage of justice or to correct grave and palpable errors committed by the Court. The power of review inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. (*Vide Shivdeo Singh & Ors. Vs. State of Punjab & Ors.*, AIR 1963 SC 1909; *Aribam Tuleshwar Sharma Vs. aribam Pishak Sharma & Ors.*, AIR 1979 SC 1047; *Union Carbide Corporation Vs. Union of India & Ors.*, AIR 1992 SC 248; *S. Nagaraj & Ors. (Supra)*; *Parision Devi & Ors Vs. Sumitri Devi & Ors.*, (1997) 8 SCC 715; *Surjit Singh & Ors. Vs. Union of India & Ors.*, (1997) 10 SCC 592; *Revenue Divisional Officers & Ors Vs. A. Aruna & Ors.*, (1998) 6 SCC 494; & *Rajendra Kumar & Ors. Vs. Rambhal & Ors.*, AIR 2003 SC 2095). We do not dispute the legal propositions settled by the Hon'ble Supreme Court in the aforesaid judgments and that is the ratio of the judgments, referred to by us over and above. The power of review is to be exercised within the

definitive limits. More so, a person who seeks equity must do equity and he should approach the Court with clean hands, clean mind and with clean objective. The perception of justice varies from person to person, and a litigant who succeeds in Court, claims that justice has been done with him but the litigant who loses, though may not have a case at all, raises grievance that justice has not been done with him.

31. In view of the above discussion, the law of review can be summarized that it lies only on the grounds mentioned in O. 47 R. 1CPC. The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other "sufficient reason" must satisfy that the said reason is analogous to the conditions mentioned in O. 47 R. 1 CPC. Under the garb of review, a party cannot be permitted to re-open the case and to gain a full-fledged inning for making submissions, nor review lies merely on the ground that it may be possible for the Court to take a view contrary to what had been taken earlier. Even the judgment given subsequent to the decision in a case can be no ground for entertaining the review. Review lies only when there is error apparent on the face of the record and that fallibility is by the over-sight of the Court. If a counsel has argued a case to his satisfaction and he had not raised the particular point for any reason whatsoever, it cannot be a ground of review for the reason that he was the master of his case and might not have considered it proper to press the same or could have thought that arguing that point would not serve any purpose. If a case has been decided after full consideration of arguments made by a counsel, he cannot be permitted, even under the garb of doing justice or substantial justice, to engage the court again to decide the controversy already decided. If a party is aggrieved of a judgment, it must

approach the Higher Court but entertaining a review to re-consider the case would amount to exceeding its jurisdiction, conferred under the limited jurisdiction for the purpose of review. Justice, as explained above, connotes different meaning to different persons in different contexts, therefore, courts cannot be persuaded to entertain a review application to do justice unless it lies only on the grounds mentioned in the statutory provisions.

32. Further relying on *Budhia Swain & Ors. vs. Gopinath Deb and others*; (1999) 4 SCC 396, the order can be recalled, if it was obtained by misleading the Court. Paras 6, 8 and 9 of the above citation are quoted below:

“6. What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in Indian Bank Vs. M/s Satyam Fibres India Pvt. Ltd. 1996 (5) SCC 550. Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order

- i. obtained by fraud practised upon the Court,*
- ii. when the Court is misled by a party, or*
- iii. when the Court itself commits a mistake which prejudices a party.”*

33. In *A.R. Antulay Vs. R.S. Nayak & Anr.* AIR 1988 SC 1531 (vide para 130), this Court has noticed motions to set aside judgments being permitted where –

- i. a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented,*
- vi. a judgment was obtained by fraud,*

() a party has had no notice and a decree was made against him and such party approaches the Court for setting aside the decision ex debito justitiae on proof of the fact that there was no service.

8. In our opinion a tribunal or a court may recall an order earlier made by it if

(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,

() there exists fraud or collusion in obtaining the judgment,

(i) there has been a mistake of the court prejudicing a party or

(ii) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppels or acquiescence.

9. A distinction has to be drawn between lack of jurisdiction and a mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the orders passed therein a nullity. A mere error in exercise of jurisdiction does not vitiate the legality and validity of the proceedings and the order passed thereon unless set aside in the manner known to law by laying a challenge subject to the law of limitation. In Hira Lal Patni Vs. Sri Kali Nath AIR 1962 SC 199, it was held :-

“The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed

the decree was lacking in inherent jurisdiction in the sense that it could not have seisen of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it.”

34. Furthermore, the Court must be held to have the requisite power even under Section 151 of Code of Civil Procedure to issue such direction either suo-motu or otherwise which, according to him, would lead to the truth.

35. In our opinion a tribunal or a court may recall an order earlier made by it if :-

- a) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,
- b) there exists fraud or collusion in obtaining the judgment,
- c) there has been a mistake of the court prejudicing a party or
- d) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

36. The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppels or acquiescence. However, the State PCB is being statutory authority has to dispose the application moved by the applicant according to the rules and according to the parameter laid down

by the internal rules and there should not be any violation of the rules. In view of the facts the **Miscellaneous Application No. 99 of 2023** alongwith **I.A. No. 772/2023** are devoid of any merit and deserves to be **dismissed and accordingly dismissed.**

Sheo Kumar Singh, JM

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

12th February, 2024
M.A. No. 99/2023 (CZ)
PN