

Item No. 01

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

**Review Application No. 06/2023(CZ)
In
Original Application No. 336/2014(CZ)**

Guniya Nadi Bachao through Dr. Pushpraj

Applicant(s)

Vs.

State of Madhya Pradesh & Ors.

Respondent(s)

Date of Hearing: **08.01.2024**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

IN CHAMBER BY CIRCULATION

ORDER

1. This application has been moved with the prayer to review/recall the order dated 05.10.2023 passed by this Tribunal in Execution Application No. 08/2023.
2. The order under question is quoted below:-

"I.A.No.95/2023

I.A. No. 95/2023 has been filed for urgent hearing. Accordingly, the matter is being heard.

I.A.No.111/2023

2. I.A. No. 111/2023 has been filed for taking additional documents on record. The additional documents be kept on record with providing copy to the opposite parties.

I.A. No. 91/2023

3. I.A. 91/2023 has been filed for interim relief. Learned Counsel for the Applicant has argued that on the name of beautification the width of the river is encroached/reduced and there are

constructions by the Municipal Corporation to use the area of the river for marketing and for commercial purpose. He has further relied on order dated 21.01.2016 passed in O.A. 336/2014(CZ) where it was observed that the Chairman of the Municipal Board submit a plan for covering the nallah and development into the commercial premises. It was observed that aforesaid plan cannot be approved as no efforts for obstructing or covering a natural drainage system can be permitted and the free flow of water in such natural drainage pattern cannot be allowed to be obstructed in any manner. It was further observed that Municipal Board will not to proceed with the aforesaid project. The contention of the Learned Counsel for the applicant is violating the above directions and on the name of construction of bridge the area/width of the river is curtailed by making construction for commercial purposes. Learned Counsel for the State has submitted that only bridge is being constructed and pillar has to be installed in the width of the river. Learned Counsel for the Applicant has no objection with regard to pillar but free flow of the water should not be obstructed and width of the river be not curtailed and should not be utilised for commercial purposes.

4. Learned Counsel for the State has submitted that the respondents are bound by the order dated 21.01.2016 noted in the para 6 of the application and with these observations the Original Application may be disposed of. With concurrence of the Learned Counsel for the parties, we dispose of this Original Application along with all I.As with the direction to Respondent to strictly comply the directions issued by this Tribunal in Original Application quoted above.”

3. The contention of the applicant is that learned counsel in the previous order as quoted has submitted that the respondents are bound to comply

the order in question however the authorities have previously flouted the directions of the Tribunal and have not complied with.

4. It is further submitted that respondents have proposed to construct a bridge on the length of the river so as to effectively cover the river and this is the grievance of the applicant.
5. The grounds for filing the review are limited to the fact that the applicant has discovered a new and important matter for evidence after exercise of due diligence, which was not within his knowledge.
6. 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).

7. 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 simpliciter 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.

8. 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.
9. 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 mis-apprehension of true state of circumstances has been held to be sufficient ground to exercise the power."

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.

10. 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.”

11. 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.”

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.

12. 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.”

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.

13. 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.

14. 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.’”

15. 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.”

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 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.

16. 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).

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”.

17. 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.

18. 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).

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 it 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.”

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.

19. 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.

20. 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.”

21. Further relying on *Budhia Swain and others v. 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.

22. 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.”

23. 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.

24. 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.

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. The Review Application is devoid of any merit and deserves to be dismissed and accordingly dismissed.

25. However, in case of non compliance or violation the applicant will be at liberty to move an application before the appropriate forum according to the rules.

26. The **Review Application No. 06/2023 stands disposed of** accordingly.

Sheo Kumar Singh, JM

Dr. Afroz Ahmad, EM

08th January, 2024
R.A. No. 06/2023 (CZ)
PN