THE HIGH COURT OF MADHYA PRADESH
Writ Petition No.4934/2016
Ramdas Ojha Vs. Ramvilas and others

Gwalior, Dated :18/12/2018

Shri N.K. Gupta, Senior Advocate with Shri Ravi Gupta, Advocate for petitioner.

Shri Sarvesh Sharma, Advocate for respondents no.1 and 2.

This petition under Article 227 of the Constitution of India has been filed against the order dated 8/7/2016 passed by Board of Revenue in Review Case No.1692-1/2016 on the ground that the Board of Revenue has travelled beyond the scope of review and has reconsidered the case on merits and has wrongly reversed the findings recorded by it in its order dated 20/5/2016 passed in revision No.558-1/2016.

The necessary facts for disposal of the present petition in short are that after the death of one Ramnarayan, petitioner-Ramdas filed an application for mutation of his name on the basis of a Will. Accordingly, the Tahsildar by order dated 31/12/2014 accepted the contentions of the petitioner and mutated his name in the revenue records. Being aggrieved by the order dated 31/12/2014, the respondents no.1 and 2, namely, Ramvilas and Ramkishore filed an appeal before the Court of SDO, Bhind, which was dismissed by the SDO, Bhind by order dated 8/10/2015. Being aggrieved by the order of the

SDO, Bhind, it appears that the respondents no.1 and 2 filed a second appeal before the Court of Additional Commissioner, Chambal Division Morena and the said appeal was allowed by order dated 11/2/2016 and the orders passed by the Tahsildar and the SDO were set aside and it was directed that the names of legal representatives of Ramvilas and Rajabeti be also recorded in the revenue records alongwith the petitioner-Ramdas. It appears that, being aggrieved by the order of the Additional Commissioner, the petitioner filed a revision before the Board of Revenue and it appears that the Board of Revenue by order dated 20/5/2016 allowed the said revision and the order passed by the Additional Commissioner was set aside and the orders passed by the Tahsildar and the SDO were restored.

Being aggrieved by the order passed by the Board of Revenue dated 20/5/2016, the respondents no.1 and 2 filed a review before the Board of Revenue on the ground that the order dated 20/5/2016 has been wrongly passed because the Will, which was executed in favour of petitioner, was substituted by the subsequent Will executed by Ramnarayan and, therefore, the subsequent Will would prevail over the previous Will.

It appears that the Board of Revenue by order dated 8/7/2016 passed in review application no.1692-1/2016 allowed the review application and set aside the order of its predecessor on merits and restored the order of the Additional Commissioner, Chambal Division, Morena.

Challenging the order passed by the Board of Revenue it is submitted by the petitioner that if the respondents no.1 and 2 were of the view that a wrong order has been passed by the Board of Revenue, then they had a remedy of challenging the said order by filing a writ petition, but under the garb of review only the errors, which are apparent on the face of record, can be corrected and the order passed by the predecessor cannot be reviewed on its merits.

Per contra, it is submitted by the counsel for respondents no.1 and 2 that the Board of Revenue has not committed any mistake or illegality by setting aside the wrong order which was passed by the Board of Revenue.

Heard learned counsel for the parties.

In the present case without touching the controversy on merits, the only question which is involved in the present case is about the scope of review.

The pre-amended provision of Section 51 of the M.P.

Land Revenue Code, 1959, as it was in the year 2016, reads as under:-

> "**51. Review of orders.**-(1) The Board and every Revenue Officer may, either on its/his own motion or on the application of any party interested review any order passed by itself/ himself or by any of its/his predecessors in office and pass such order in reference thereto as it/he thinks fit;
> Provided that - -
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> [(i) if the [Commissioner,] Settlement Commissioner, Collector or Settlement Officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board, and if an officer subordinate to a Collector or Settlement Officer proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction in writing of the authority to whom he is immediately subordinate;]
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> [(i-a) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order;]
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> (ii) no order from which an appeal has been made, or which is the subject of any revision proceedings shall, so long as such appeal or proceedings are pending be reviewed;
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> (iii) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings, and no application for the review of such order shall be entertained unless it is made within [sixty days] / [ninety days] from the passing of the order:
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> **Proviso – applicable in M.P. only**

> [Provided that where the order, against which the application for review is being presented, made before the coming into force of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2011, in such case review shall be entertained within ninety days from the date of order.]
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> (2) No order shall be reviewed except on the grounds provided for in the Code of Civil Procedure, 1908 (V of 1908).
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> (3) For the purposes of this section the Collector shall be deemed to be the successor in office of any Revenue Officer who has left the district or who has ceased to exercise powers as a Revenue Officer and to whom there is no successor in the district.
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> (4) An order which has been dealt with in appeal or on revision shall not be reviewed by any Revenue Officer subordinate to the appellate or revisional authority."

Thus, it is clear from Section 51 (2) of the Code, 1959 that no order shall be reviewed except on the ground provided for in the Code of Civil Procedure. Thus, it is clear that except correcting the error apparent on the face of record, the order cannot be reviewed on merits by holding that on earlier occasion wrong order was passed.

In the case of **S. Nagaraj v. State of Karnataka** reported in **1993 Supp (4) SCC 595**, the Supreme Court referred to the judgments in **Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai** reported in **AIR 1941 FC 1** and **Rajunder Narain Rae v.**

Bijai Govind Sing reported in **(1837-41) MIA 181** and observed:

> "*19*. Review literally and even judicially means re-examination or reconsideration. 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. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury* v. *Sukhraj Rai* the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae* v. *Bijai Govind Sing* that an order made by the Court was final and could not be altered: (*Rajunder Narain Rae case*, MIA p. 216)
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> '… nevertheless, if by misprision in embodying the judgments, errors have been introduced, these courts possess, by common law, the same power which the courts of record and statute have of rectifying the mistakes which have crept in. … The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have, however, gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects, in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.'

Basis for exercise of the power was stated in the same decision as under:

> 'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'
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> Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (*c*) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order 40 had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. 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. Apart from Order 40 Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

In **Moran Mar Basselios Catholicos v. Most Rev. Mar**

Poulose Athanasius reported in **AIR 1954 SC 526**, the Supreme Court referred to the provisions of the Travancore Code of Civil Procedure, which was similar to Order 47 Rule 1 CPC and observed: (AIR p. 538, para 32)

> "*32*. … It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.
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> It may allow a review on three specified grounds, namely, (*i*) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (*ii*) mistake or error apparent on the face of the record, and (*iii*) for any other sufficient reason.
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> It has been held by the Judicial Committee that the words 'any other sufficient reason' must mean 'a reason sufficient on grounds, at least analogous to those specified in the rule'. (See *Chhajju Ram* v. *Neki*) This conclusion was reiterated by the Judicial Committee in *Bisheshwar Pratap Sahi* v. *Parath Nath* and was adopted by our Federal Court in *Hari Sankar Pal* v. *Anath Nath Mitter*, FC at pp. 110-11. The learned counsel appearing in support of this appeal recognises the aforesaid limitations and submits that his case comes within the ground of 'mistake or error apparent on the face of the record' or some ground analogous thereto."

In **Thungabhadra Industries Ltd. v. Govt. of A.P.** reported in **AIR 1964 SC 1372**, the Supreme Court reiterated

that the power of review is not analogous to the appellate power and observed: (AIR p. 1377, para 11)

> "*11*. … 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 **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma** reported in **(1979) 4 SCC 389**, the Supreme Court answered in affirmative the question whether the High Court can review an order passed under Article 226 of the Constitution and proceeded to observe: (SCC p. 390, para 3)

> "*3*. … 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."

In **Meera Bhanja v. Nirmala Kumari Choudhury** reported in **(1995) 1 SCC 170,** the Supreme Court considered as to what can be characterised as an error apparent on the face of the record and observed: (SCC p. 173, para 9)

> "*9*. … it has to be kept in view that an error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in *Satyanarayan Laxminarayan Hegde* v. *Mallikarjun Bhavanappa Tirumale* wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record: (AIR pp. 141-42, para 17)
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> *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."

In **Parsion Devi v. Sumitri Devi** reported in **(1997) 8 SCC 715**, the Supreme Court observed: (SCC p. 719, para 9)

> "*9*. … 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 … A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

In **Lily Thomas v. Union of India** reported in **(2000) 6 SCC 224**, the Supreme Court summarised the scope of the power of review in the following words: (SCC p. 251, para 56)

> "*56*. … Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised."

In **Haridas Das v. Usha Rani Banik** reported in **(2006) 4 SCC 78**, the Supreme Court observed: (SCC p. 82, para 13)

> "*13*. … The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing 'on account of some mistake or error apparent on the face of the records or for any other sufficient reason'. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict."

In **State of W.B. v. Kamal Sengupta** reported in **(2008) 8**

SCC 612, the Supreme Court considered the question whether a Tribunal established under the Administrative Tribunals Act, 1985 can review its decision, referred to Section 22(3) of that Act, some of the judicial precedents and observed: (SCC p. 633, paras 21-22)

> *"21*. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.
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> *22*. The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(*f*) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

The Supreme Court in the case of **Haridas Das Vs.**

Usha Rani Banik (Smt) and others reported in **(2006) 4 SCC 78** has held as under:-

> "**14.** In *Meera Bhanja* v. *Nirmala Kumari Choudhury* it was held that:
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> "*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 1 CPC. 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, this Court, in *Aribam Tuleshwar Sharma* v. *Aribam Pishak Sharma* speaking through Chinnappa Reddy, J. has made the following pertinent observations:
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> '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 power which may enable an appellate court to correct all manner of errors committed by the subordinate court.' " (SCC pp. 172-73, para 8)
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> **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* 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)

"It is true as observed by this Court in *Shivdeo Singh* v. *State of Punjab* there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and 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* has been followed in *Meera Bhanja*. 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. *Millikarjun Bhavanappa Tirumale* were also noted: (AIR p. 137)

"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." (SCR pp. 901-02)

18. It is also pertinent to mention the observations of this Court in *Parsion Devi* v. *Sumitri Devi*. Relying upon the judgments in *Aribam* and *Meera Bhanja* it was observed as under: (SCC p. 719, para 9)

"*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'."

Thus, it is clear that except for correcting the error apparent on the face of record, the review petition cannot be entertained as an appeal. Rehearing of the dispute because a party had not highlighted all the aspects of the case and could have argued the same more forcefully cannot be a ground for review.

In the present case, it was the case of respondents no.1 and 2 that the petitioner had suppressed the subsequent Will and by suppression of the said fact, the order dated 20/5/2015 from the Board of Revenue was obtained. However, it is an admitted position that respondents no.1 and 2 were also the party to the revision, which was decided by the Board of Revenue by order dated 20/5/2005 and they were duly represented by their counsel and their counsel had argued the matter. It is not the case of respondents no.1 and 2 that in spite of the arguments advanced by the counsel for respondents no.1 and 2, the Board of Revenue ignored the factum of subsequent Will. If the petitioner had suppressed some fact, then respondents no.1 and 2 had a liberty to disclose the same and if the respondents no.1 and 2 had also decided to keep quite, then they cannot say that the order was obtained by the petitioner by suppressing the material fact. Even otherwise, if

the respondents no.1 and 2 were of the view that the order dated 20/5/2005 passed by the Board of Revenue was wrong, then they had an alternative and efficacious remedy of filing a writ petition before this Court, however, under the garb of review the entire order cannot be reopened and cannot be reversed. Accordingly, this Court is of the considered opinion that while entertaining the review petition, Board of Revenue has travelled beyond its scope of interference.

Accordingly, the order dated 8/7/2016 passed by the Board of Revenue in review case No.1692-1/2016 is hereby quashed. The writ petition succeeds and is hereby **allowed**.

(G.S. Ahluwalia)
Judge

Arun*