IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 23rd OF JANUARY, 2025

REVIEW PETITION No. 1081 of 2024

HEMANT MALVIYA

Versus

THE STATE OF M.P. AND OTHERS

Appearance:

Shri Ashish Choubey - Advocate for the petitioner.

Shri Sudeep Bhargava - Dy. Advocate General for the respondent / State.

ORDER

Per*: *Justice Vivek Rusia

Petitioner who filed a Public Interest Litigation before this Court is seeking removal of a temple established in the year 2012 at Yashwant Niwas Road, Indore (M.P.). The Division Bench of this Court dismissed the writ petition by placing the reliance on a judgment passed by the Apex Court in the case of ***State of Uttaranchal V/s Balwant Singh Chaufal and others, (2010) 3 SCC 402*** as the petitioner was not found Social Worker to invoke the public interest writ petition.

02. The Writ Court has also held that the issue of encroachment can be decided after recording the evidence and the writ petition cannot be decided based on the disputed question of facts. Now, the petitioner has filed this review petition on the ground that the Division Bench has wrongly placed reliance on a judgment passed in the case of ***State of***

Uttaranchal V/s Balwant Singh Chaufal and others *(supra)*. The Division Bench has not understood the guidelines laid down by the Apex Court in the aforesaid judgment.

03. The petitioner is claiming himself to be a Journalist, he has filed the writ petition only in respect of construction of one temple at Yashwant Niwas Road. He has impleaded as many as 25 respondents, out of which respondents No.6 to 25 are the President and Trustees of Manmohan Parshavanath Jain Shwetamber Mandir Evam Guru Mandir Trust. If petitioner is aggrieved by illegal construction of religious places, then he ought to have challenged all the religious structures constructed either on government land or without permission.

04. The petitioner is not a resident of nearby places of Yashwant Niwas. He has not disclosed as to why he is only targeting one temple at Yashwant Niwas Road in public interest. Being a Journalist, he ought to have conducted a survey in Indore or Madhya Pradesh about all the illegal constructions before filing this PIL. Therefore, such a petition cannot be treated as Public Interest Litigation when the petitioner is interested only in one temple. It appears that he has some vested interest in it. We do not find any mistake apparent on the face of the record in the order passed by Division Bench to exercise the power of review.

05. The Apex Court in the case of ***Haridas Das v/s Usha Rani Bank (Smt.) & Others*** *reported in* ***(2006) 4 SCC 78*** in paragraph 13 and 20 has held as under :-

> **"13.** In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it "may make such order thereon as it thinks fit". 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. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. This Court in Thungabhadra Industries Ltd. v. Govt. of A.P.[1] held as follows: (SCR p. 186)
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> "[T]here 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. … 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."
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> **20.** When the aforesaid principles are applied to the background facts of the present case, the position is clear that the High Court had clearly fallen in error in accepting the prayer for review. First, the crucial question which according to the High Court was necessary to be adjudicated was the question whether Title Suit No. 201 of 1985 (sic 1 of 1986) was barred by the provisions of Order 2 Rule 2 CPC. This question arose in Title Suit No. 1 of 1986 and was irrelevant so far as Title Suit No. 2 of 1987 is concerned. Additionally, the High Court erred in holding that no prayer for leave under Order 2 Rule 2 CPC was made in the plaint in Title Suit No. 201 of 1985. The claim of oral agreement dated 19-8-1982 is mentioned in para 7 of the plaint, and at the end of the plaint it has been noted that the right to institute the suit for specific performance was reserved. That being so, the High Court has erroneously held about infraction of Order 2 Rule 2 CPC. This was not a case where Order 2 Rule 2 CPC has any application."

In the aforesaid case, the Apex Court has held that rehearing of a case can be done on account of some mistake or an error apparent on the face of the record or for any other sufficient reason. In the present case, there is no error apparent on the face of the record and the petitioner in

fact under the guise of review is challenging the order passed by this Court, which is under review.

06. Similarly, the Apex Court in the case of ***State of West Bengal & Others v/s Kamal Sengupta & Another*** *reported in* ***(2008) 8 SCC 612*** in paragraphs 21, 22 and 35 has held as under:-

> "**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.
> **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.
> **35.** The principles which can be culled out from the abovenoted judgments are:
> (*i*) The power of the Tribunal to review its order/decision under Section 22(3)(*f*) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.
> (*ii*) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.
> (*iii*) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
> (*iv*) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(*f*).
> (*v*) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
> (*vi*) A decision/order cannot be reviewed under Section 22(3)(*f*) on the basis of subsequent decision/judgment of a coordinate or larger

> Bench of the tribunal or of a superior court.
> (*vii*) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
> (*viii*) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such 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/tribunal earlier."

In the aforesaid case the Apex Court has held that a mistake or an error apparent on the face of the record means a mistake or an error which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record, on the contrary this Court has decided the case on merits.

07. The Apex Court again dealing with the scope of interference and limitation of review in the case of ***Inderchand Jain (dead) Through LRs v/s Motilal (dead) Through LRs,*** *reported in* ***(2009) 14 SCC 663*** in paragraphs 7, 22, 24, 29, 31 and 33 has 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:
> "*17*. The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, 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.'

22. Whereas the appellant-defendant filed a review application confined to the question that he was entitled to the restitution of the property and mesne profit in respect whereof the learned Single Judge of the High Court did not pass any specific order, the application for review filed by the respondent was on the merit of the judgment. The relevant grounds of review which have been placed before us relate to:

(*i*) Unconditional withdrawal of some amount by one of the creditors of the defendant as also the defendant himself.

(*ii*) The defendant's application before the executing court that he was ready and willing to get the sale deed executed on receipt of amount in cash and the said admission allegedly was not brought to the notice of the court.

(*iii*) While holding that there was no agreement to reduce the sale consideration, the High Court had ignored the fact that it was an admitted case of the parties, as stipulated in the contract, that the defendants would get the premises vacated from the tenants within three months.

(*iv*) The appellant had prayed for an alternative relief viz. that he was ready to get the decree for specific performance of contract by paying Rs 1,15,000. The court did not consider the evidence of DWs 1 to 6 in their proper perspective.

(*v*) The court did not consider that the property could not be restored back to the appellant-defendant and as such the court should have exercised its discretionary jurisdiction.

24. An appeal is a continuation of the suit. Any decision taken by the appellate court would relate back, unless a contrary intention is shown, to the date of institution of the suit. There cannot be any doubt that the appellate court while exercising its appellate jurisdiction would be entitled to take into consideration the subsequent events for the purpose of moulding the relief as envisaged under Order 7 Rule 7 read with Order 41 Rule 33 of the Code of Civil Procedure. The same shall, however, not mean that the court would proceed to do so in a review application despite holding that the plaintiff was not entitled to grant of a decree for specific performance of contract.

29. Order 41 Rule 1 of the Code stipulates that filing of an appeal would not amount to automatic stay of the execution of the decree. The law acknowledges that during pendency of the appeal it is possible for the decree-holder to get the decree executed. The

> execution of the decree during pendency of the appeal would, thus, be subject to the restitution of the property in the event the appeal is allowed and the decree is set aside. The court only at the time of passing a judgment and decree reversing that of the appellate court should take into consideration the subsequent events, but, by no stretch of imagination, can refuse to do so despite arriving at the findings that the plaintiff would not be entitled to grant of a decree.
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> **31.** Contention of Mr Venugopal that the defendant having accepted novation of contract but only the quantum of the amount being different, the court could have asked the respondent-plaintiff to deposit a further sum of Rs 24,000 cannot be accepted for more than one reason. Apart from the fact that such a contention had never been raised before the appellate court, keeping in view the finding of fact arrived at that there had in fact been no novation of contract, such a course of action was not open. In any view of the matter, the same would amount to reappreciation of evidence which was beyond the review jurisdiction of the High Court.
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> **33.** The High Court had rightly noticed the review jurisdiction of the court, which is as under:
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> "The law on the subject—exercise of power of review, as propounded by the Apex Court and various other High Courts may be summarised as hereunder:
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> (*i*) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.
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> (*ii*) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of 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 the points where there may conceivably be two opinions.
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> (*iii*) Power of review may not be exercised on the ground that the decision was erroneous on merits.
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> (*iv*) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.
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> (*v*) An application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*."
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> In our opinion, the principles of law enumerated by it, in the facts of this case, have wrongly been applied."

The Apex Court while dealing with the scope of review has held that re-appreciation of evidence and rehearing of case without there being any error apparent on the face of the record is not permissible in light of provisions as contained U/s 114 and Order 47 Rule 1 of Code of Civil Procedure, 1908.

08. The Apex Court in the case of ***S. Bagirathi Ammal v/s Palani***

Roman Catholic Mission *reported in* ***(2009) 10 SCC 464*** in paragraphs 12 and 26 has held as under :-

> "**12.** An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order. With this background, let us analyse the impugned judgment of the High Court and find out whether it satisfies any of the tests formulated above.
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> **26.** As held earlier, if the judgment/order is vitiated by an apparent error or it is a palpable wrong and if the error is self-evident, review is permissible and in this case the High Court has rightly applied the said principles as provided under Order 47 Rule 1 CPC. In view of the same, we are unable to accept the arguments of learned Senior Counsel appearing for the appellant, on the other hand, we are in entire agreement with the view expressed by the High Court."

09. In view of the above, this Review Petition stands **dismissed** with the cost of **Rs.25,000/- (Rupees Twenty Five Thousand Only)**, which shall be deposited in the account of Legal Aid Services Authority, Indore.

(VIVEK RUSIA)
JUDGE

(GAJENDRA SINGH)
JUDGE

Divyansh