IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE DUPPALA VENKATA RAMANA

ON THE 24th OF JULY, 2024

REVIEW PETITION No. 782 of 2024

SMT. HUKMA DADING

Versus

JITENDRA DADING

Appearance:

Shri Brijendra Gupta- Advocate

ORDER

Heard on **I.A. No. 6324/2024**, an application for condonation of delay.

For the reasons stated in the application, **I.A. No. 6324/2024** is allowed. Delay of 114 days in filing the review petition is hereby condoned.

Also heard on the question of admission.

2. The instant review petition under Order 47 Rule (1) r/w Section 114 of the Code of Civil Procedure has been filed seeking review of order dated 12.02.2024 passed in F.A. No. 1277/2022, whereby the first appeal has been allowed.

3. The brief facts of the case are that the marriage of the petitioner and the respondent was solemnized on 16.02.2009 in Dewas according to the Hindu customs and traditions. Thereafter, the respondent applied for divorce before the Family Court, Dewas and vide order dated 26.03.2022 the learned Principal Judge Family Court, Dewas has dismissed the petition for dissolution of marriage on the ground of cruelty and desertion filed under Section 13(1)(ia) & (ib) of the Hindu Marriage Act, 1955. Being aggrieved, the respondent filed first appeal under Section 19 of the Family Courts Act, 1984 bearing F.A. No. 1277/2022 which was allowed by this Hon'ble Court vide order dated 12.02.2024. Hence, this review petition.

4. Learned counsel for the petitioner submitted that the order dated 12.02.2024 passed in F.A. No. 1277/2022 is required to be reviewed because the respondent has presented the wrong facts before this court and he deliberately did not allow the petitioner to have any information about the case nor he allow the summons to be duly served. Learned counsel for the petitioner further stated that she still resides at the said address, which was verified by the Postal Department itself. He stated that the respondent has got married for the second time after the decision of this Court, on which the petitioner came to know about this, a complaint was lodged by the petitioner on 07.05.2024, but no action has been taken on the complaint. On 15.05.2024 another complaint was made before the Superintendent of Police, Dewas on which the police summoned the respondent and interrogated him, then the petitioner came to know the fact that the respondent filed the first appeal bearing F.A. No. 1277/2022 before this Hon'ble Court which was allowed in absence of the petitioner. Learned counsel for the petitioner further submitted that the order which has been passed without affording any opportunity of hearing to the

petitioner. On these grounds, the order impugned deserves to be quashed.

5. Heard learned counsel for the petitioner and perused the record.

6. Section 114 of the CPC which is the substantive provision, deals with the scope of review and states as follows:-

> "**Review**:- Subject as aforesaid, any person considering himself aggrieved:-
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> (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred;
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> (b) by a decree or order from which no appeal is allowed by this Code; or
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> (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

7. The grounds available for filing a review application against a judgment have been set out in Order XLVII of the CPC in the following words:

> "1. Application for review of judgment - (1) Any person considering himself aggrieved -
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> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
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> (b) by a decree or order from which no appeal is allowed, or
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> (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 to the Court which passed the decree or made the order.
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> (2) A party who is not appealing from a decree or Order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

> 1[Explanation-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.] "

8. A glance at the aforesaid provisions makes it clear that a review application would be maintainable on (i) discovery of new and important matters or evidence which, after exercise of due diligence, were not within the knowledge of the applicant or could not be produced by him when the decree was passed or the order made; (ii) on account of some mistake or error apparent on the face of the record; or (iii) for any other sufficient reason.

9. In **Col. Avatar Singh Sekhon v. Union of India and Others** reported in **1980 Supp SCC 562**, The Apex Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:

> "12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In **Sow Chandra Kante and Another v. Sheikh Habib** reported in **(1975) 1 SCC 674**, this Court observed :
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> > **'A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.'"**
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> > **(emphasis added)**

10. In **Parsion Devi and Others v. Sumitri Devi and Others** reported in **(1997) 8 SCC 715**, stating that an error that is not self- evident and the one that has to be detected by the process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise the powers of review, the Apex Court held as under:

> "7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. **In Thungabhadra Industries Ltd. v. Govt. of A.P.**1reported in **1964 SCR (5) 174**, this Court opined:
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> > '11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized 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.'
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> 8. Again, in **Meera Bhanja v. Nirmala Kumari Choudhury** reported in **(1995) 1 SCC 170**, while quoting with approval a passage from **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma** reported in **(1979) 4 SCC 389,** this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.
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> 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 this 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'".
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> [emphasis added]

11. The error referred to under the Rule, must be apparent on the face of the record and not one which has to be searched out. While discussing the scope and ambit of Article 137 that empowers the Supreme Court to review its judgments and in the course of discussing the contours of review jurisdiction under Order XLVII Rule 1 of the CPC in **Lily Thomas(supra)**, the Apex Court held:-

"54. Article 137 empowers this court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the grounds specified in Order 47 rule 1 of the Code of Civil Procedure which provides:

> "1. Application for review of judgment - (1) Any person considering himself aggrieved -
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> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
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> (b) by a decree or order from which no appeal is allowed, or
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> (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 to the Court which passed the decree or made the order.'

Under Order XL Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order XL Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

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56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. 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. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

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58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in the case of **Sarla Mudgal, President, Kalyani and Others v. Union of India and others** reported in **(1995) 3 SCC 635**. It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment in the case of **Sarla Mudgal, President, Kalyani and Others v. Union of India and others** reported in **(1995) 3 SCC 635**. We have also not found any mistake or error apparent on the face of the record requiring a review. 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. It must be an error of inadvertence. No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the judgment. The words "any-other sufficient reason appearing in Order 47 Rule 1 CPC" must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in **Chajju Ram v. Neki Ram** reported in **AIR 1922 PC 112** and approved by this Court in **Moran Mar Basselios Catholicos. v. Most Rev. Mar Poulose Athanasius** reported in **1955 SCR 520**. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. in **T.C. Basappa v. T. Nagappa** reported in **1955 SCR 250** this Court held that such error is an error which is a patent error and not a mere wrong decision. In **Hari Vishnu Kamath v. Ahmad** reported in **AIR 1955 SC 233**, it was held:

> **"It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record.** The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error, cease to be mere error and become an error apparent on the face of the record? Learned Counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated. Mr. Pathak for the first respondent contended on the

> strength of certain observations of Chagla, CJ in – **'Batuk K Vyas v. Surat Borough Municipality** reported in **ILR 1953 Bom 191**, that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. Therefore, it can safely be held that the petitioners have not made out
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> any case within the meaning of Article 137 read with Order XL of the Supreme Court Rules and Order 47 Rule 1 CPC for reviewing the judgment in Sarla Mudgal case. The petition is misconceived and bereft of any substance."
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> (emphasis added)

12. It is also settled law that in exercise of review jurisdiction, the Court cannot re-appreciate the evidence to arrive at a different conclusion even if two views are possible in a matter. In **Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. and Others** reported in **(2005) 6 SCC 651**, the Apex Court observed as follows:

> 10. ....In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."
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> (emphasis added)

13. Under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power which enables the Superior Court to correct errors committed by a subordinate Court. This point has been elucidated in **Jain Studios Ltd. V. Shin Satellite Public Co. Ltd**. reported in (**2006) 5 SCC 501,** where it was held thus:

> "11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. **It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases**.
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> 12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. **Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."**
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> (emphasis added)

14. After discussing a series of decisions on review jurisdiction in **Kamlesh Verma v. Mayawati and Others** reported in **(2013) 8 SCC 320**, the Apex Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below:

> "20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:
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> 20.1. When the review will be maintainable:
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> (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
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> (ii) Mistake or error apparent on the face of the record;
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> (iii) Any other sufficient reason.
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> The words "any other sufficient reason" has been interpreted in Chajju Ram vs. Neki17, and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulose Athanasius & Ors.18 to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in **Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors reported in (2013) 8 SCC 337**,.
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> 20.2. When the review will not be maintainable: -
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> (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
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> (ii) Minor mistakes of inconsequential import.
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> (iii) Review proceedings cannot be equated with the original hearing of the case.
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> (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
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> (v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.
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> (vi) The mere possibility of two views on the subject cannot be a ground for review.
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> (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
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> (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
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> (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

15. In **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma** reported in **(1979) 4 SCC 389**, the Apex Court was examining an order passed by the

Judicial Commissioner who was reviewing an earlier judgment that went in favour of the appellant, while deciding a review application filed by the respondents therein who took a ground that the predecessor Court had overlooked two important documents that showed that the respondents were in possession of the sites through which the appellant had sought easementary rights to access his home- stead. The said appeal was allowed by this Court with the following observations:

> "3 …It is true as observed by this Court in **Shivdeo Singh and Others v. State of Punjab** reported in **(1979) 4 SCC 389** 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 pulpable 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."**
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> (emphasis added)

16. In State of **West Bengal and Others v. Kamal Sengupta and Another** reported in **(2008) 8 SCC 612**, the Apex Court emphasized the requirement of the review petitioner who approaches a Court on the ground of discovery of a new matter or evidence, to demonstrate that the same was not within his knowledge and held thus:

> "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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> (emphasis added)

17. In the captioned judgment, the term 'mistake or error apparent' has been discussed in the following words:

> "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"**.
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> (emphasis added)

18. In **S. Nagaraj and Others v. State of Karnataka and Another** reported in **1993 Supp (4) SCC 595**, the Apex Court explained as to when a review jurisdiction could be treated as statutory or inherent and held thus :

> "18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. **Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory**

> **or inherent. The latter is available where the mistake is of the Court".**
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> (emphasis added)

19. In **Patel Narshi Thakershi and Others v. Shri Pradyuman Singhji Arjunsinghji** reported in **(1971) 3 SCC 844**, the Apex Court held as follows:

> "4….. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.……" (emphasis added)

20. In **Ram Sahu (Dead) Through LRs and Others v. Vinod Kumar Rawat and Others** reported in **(2020) SCC Online SC 896**, citing previous decisions and expounding on the scope and ambit of Section 114 read with Order XLVII Rule 1, the Apex Court has observed that Section 114 CPC does not lay any conditions precedent for exercising the power of review; and nor does the Section prohibit the Court from exercising its power to review a decision. However, an order can be reviewed by the Court only on the grounds prescribed in Order XLVII Rule 1 CPC. The said power cannot be exercised as an inherent power and nor can appellate power be exercised in the guise of exercising the power of review.

21. In our considered opinion, none of the grounds available for successfully seeking review as recognized by Order 47 Rule 1 CPC are made out in the present case. The Apex Court in the case of **S. Bhagirathi Amaal Vs. Palani Roman (2009) 10 SCC 464** has held that in order to seek review, it has to be demonstrated that the order suffers from an error contemplated under Order 47 Rule 1 CPC which is apparent on the face of record and not an error which is to be fished out and searched. A decision or order cannot be reviewed merely

because it is erroneous.

22. In another case, the Apex Court in case of **State of West Bengal Vs. Kamal Sengupta (2008) 8 SCC 612** has held that "a party cannot be permitted to argue *de novo* in the garb of review."

23. On perusal of the record and in the light of the judgments passed in the case of **S. Bhagirathi Amaal and State of West Bengal** (supra), there is no error apparent on the face of record warranting interference in the order impugned.

24. The review petition fails and is, accordingly, **dismissed**.

(SUSHRUT ARVIND DHARMADHIKARI)
JUDGE

(DUPPALA VENKATA RAMANA)
JUDGE

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