

[CS \(COMM\)/293/2023](#)

CNR NO. : DLCT010025202023

RAJAN WAHI

PROP. OF WAHI JEWELLERS

VS.

AJAY TANEJA

PROP. OF M/S TANEJA INTERNATIONAL

06-08-2025

Present : Sh. Rajesh Samanotra and Sh. Varun Gupta and
Sh. Ginish Kumar, Advocates for plaintiff.

Defendant alongwith Sh. Shantanu Awashthi,
Advocate.

Heard. File perused.

An application under S. 151 CPC dated 30-07-2025
for recalling the order dated 23-07-2025 moved by defendant, is
already on record.

Although, the Court has not issued any notice of this
application to the non-applicant/ plaintiff, the non-applicant has
filed reply to the aforesaid application. Hence, said reply is not
being taken on record.

Having gone through the averments made in the
application, Ld. Counsel of applicant/ defendant has been called
upon to make submission on the aforesaid application, before
issuance of notice thereof to the opposite side.

Accordingly, arguments heard on the said
application. Record perused.

By way of this application, the applicant/ defendant
seeks to recall order dated 23-07-2025, whereby, his application
under Order XI Rule 1(10) read with S. 151 CPC seeking
permission to place additional document/ supplementary report/

opinion dated 30-06-2025 of handwriting expert on record, with further prayer to allow said document to be tendered in evidence, came to be dismissed by this Court.

It is fairly conceded by Ld. Counsel of defendant that the defendant is actually seeking review of order dated 23-07-2025 under the guise of present application.

It is stated in the application that order dated 23-07-2025 has been passed under the pretense that the defendant had not acted diligently and had not taken timely steps earlier in relation to obtaining forensic examination of the original documents. It is stated that certain facts crucial to demonstrating the defendant's diligence particularly with respect to earlier proceedings before the Ld. MM in the connected complaint case titled '*Wahi Jewellers v. Ajay Taneja*' under NI Act, were though submitted at the time of arguments of the application on 14/07/2025 but were not placed before this Court, while adjudicating the application dated 05.07.2025 for bringing on record the supplementary forensic report dated 30.06.2025. It is stated that defendant now seeks to place those documents and facts on record and humbly prays for recall of the order dated 23.07.2025 in the interest of justice.

It is further stated in the application that the defendant has, since the inception of the present proceedings, consistently disputed the authenticity of the signatures appearing on Invoice Nos. DL/20-21/0130 and DL/20-21/0133 filed by the plaintiff. In furtherance of said defence, the defendant had in fact previously also filed an application dated 25.08.2023 *i.e.* within only a few days after reference of the case to Truth Labs, before the

Ld. MM. in the NI Act case seeking inspection of the original documents by forensic expert. Copy of application dated 25.08.2023 along with proof of service is attached as Annexure A with the application in hand.

It is further stated that the said application for inspection by the expert, for reasons unknown to the defendant, was neither heard nor disposed of by the then Ld. MM in the NI Act case and was just simply kept in the Court file. The defendant once again mentioned the pending application before Ld. MM. However, Ld. MM observed that the application could only be considered at a later and more appropriate stage *i.e.* the stage of the Defence evidence, and accordingly, the application was kept pending. It is further stated that defendant has recently inspected the Court file in the NI Act case and confirms that the application dated 25.08.2023 still remains in the Court file. It is further stated that since there was no change of stage in the NI ACT Case *i.e.* it remains to be at CE only, the said application has remained pending before said Court till date. Copies of last few orders of the NI ACT case showing no change in stage in the NI Act case are annexed herewith and marked as Annexure- C

It is argued by Ld. Counsel of defendant that after extensive cross-examination of DW4 Sh. A. K. Gupta/ Handwriting Expert during trial, the defendant was constrained to file a fresh application before the Court of Ld. MM in pending NI Act case seeking release of the original invoices from Court file, so that the documents could be examined at the forensic lab and Ld. MM was pleased to allow this application, vide order dated 09.06.2025 and the original documents were accordingly handed

over to the defendant for this limited purpose. It is further submitted that thereafter, the defendant immediately sent the original invoices to Truth Labs and requested Truth Labs to get a forensic examination conducted on an expedited basis. Thereafter, Truth Labs assigned the matter to the Forensic expert who after comprehensive forensic analysis, issued a supplementary report dated 30.06.2025 reaffirming his earlier conclusion that the signatures appearing on the two invoices were forged and unauthentic. It is further submitted that the defendant thereafter moved the said application to bring the said supplementary opinion on record, before this Court, which application was dismissed, vide order dated 23.07.2025, passed under the impression that the defendant had not been diligent and was attempting to fill gaps at the final stage of trial. Ld. Counsel of defendant has contended that the defendant had initiated steps as early as in August 2023 *i.e.* just a few months after the present proceedings were initiated and a few days after the requisition was submitted to Truth Labs, and any procedural delay that might have occurred, was beyond the control of the defendant.

He further submitted that the supplementary report sought to be produced, merely builds upon the original opinion already on record and does not change the nature of the defendant's defence. No new plea is sought to be introduced. The Defendant has consistently taken the position that the signatures were forged and is only seeking to place the same document with the same findings before this Court, just based on better source *i.e.* the originals of the document already on record. Further, it is contended that it cannot be said that the said report was already

available with the applicant and that he could have produced it previously. It is further submitted that exclusion of the supplementary report would cause serious prejudice to the defendant's right to defend the suit, while permitting it to be brought on record, will not cause any undue harm or delay to the plaintiff and would in turn assist the Court in rendering complete justice.

Before proceeding to deal with the aforesaid contentions raised on behalf of defendant, it would be apposite to refer to the legal position on the point in issue regarding power of Court to review its order.

Section 114 CPC deals with the review of judgments and order. It reads as under:-

114. Review. - Subject as aforesaid, any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(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.

Order XLVII Rule 1 CPC reads as under:-

“Review

1. Application for review of judgment. - 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 to the Court which
passed the decree or made the order.*

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It is *trite law* that the power of review can be exercised by the Court only subject to the applicant satisfying the following conditions :-

(1) there is 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 impugned order was passed;

(2) there is some mistake or error apparent on the face of record; and

(3) for any other sufficient reason. It is settled law that any other sufficient reason is *ejusdem generis* to the previous grounds.

Hon’ble Apex Court in the case of “*S. Madhusudhan Reddy Vs. Naryana Reddy and Ors.*”, bearing Civil Appeal No.5503-04 of 2022 decided on 18.08.2022, has discussed the scope of review as provided under the law. Relevant portion of the said judgment reads as under:-

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16. 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), this Court held as under:

“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 case, 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-

(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 an 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 Sarla Mudgal case. 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 Sarla Mudgal case. 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 and approved by this Court in Moran Mar Basselios Catholicos V. Most Rev. Mar Poulose Athanasius. 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 vs. T. Nagappa this Court held that such error is an error which is a patent error and not a mere wrong decision. In Hari Vishnu Kamath vs. Ahmad, 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’ 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 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.”

17. It is also settled law that in exercise of review jurisdiction, the Court cannot reappreciate 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, this Court observed as follows:

“10.In a review petition it is not open to this Court to appreciate 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 on appreciation of evidence would amount to converting a review petition into an appeal in disguise.”

18. Under the garb of filling 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. 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 negated. 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.

12. When a prayer to appoint an arbitrator by the applicant therein 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."

19. After discussing a series of decisions on review jurisdiction in Kamlesh Verma vs. Mayawati and Others, this 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:

20.1. When the review will maintainable:

(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;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in Chajju Ram vs. Neki, and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poullose Athanasius & Ors. 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.

20.2. When the review will not be maintainable:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of injustice.*
- (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.*
- (vi) The mere possibility of two views on the subject cannot be a ground for review.*
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.*
- (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.*
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”*

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26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court’s jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record of the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction

between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as “for any other sufficient reason”. The said phrase has been explained to mean “a reason sufficient on grounds, atleast analogous to those specified in the rule” (Refer: Chajju Ram v Neki Ram and Moran Mar Basselios Catholics and Anr. v. Most Rev. Mar Poulouse Athanasius and Others).

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Now coming back to the facts of the present case. A bare perusal of the averments made in the application in hand, would reveal that none of the grounds on the basis of which review is sought, is covered under S. 114 read with Order XLVII Rule 1 CPC dealing with the power of the Court to review the order. Further, the applicant/ defendant has also failed to point out any error apparent on the face of record, which would entitle him to seek review of the order dated 23-07-2025, passed by this Court. The applicant/defendant has failed to show that there is any discovery of new facts or evidence after passing of order dated 23-07-2025.

During the course of arguments, this Court has indicated to Ld. Counsel of defendant that in the absence of any of the grounds of review as stipulated by law, whether the applicant/ defendant would still be pressing this application, on which, Ld. Counsel of defendant, on instructions, has submitted that the defendant is pressing the application and same may be decided on merit, even if it has to be dismissed.

The entire conduct of the defendant in moving the application in hand without disclosing or making out any ground whatsoever warranting review of order dated 23-7-2025, passed by this Court and insisting upon the Court to decide the application by speaking order, cannot be appreciated by the Court of law and thus, this Court is of the opinion that the application in hand is nothing but an abuse of process of the law and hence, needs to be dealt with stern hand.

In view of the foregoing discussion and the reasons recorded here-in-above and while placing reliance upon the principles governing power of review, as laid down by Hon'ble Apex Court in the above referred judgment, Court does not find any merit in the present application and accordingly, same is hereby dismissed with cost of Rs.10,000/- which is directed to be deposited with DLSA, Central District, Tis Hazari Court, Delhi and receipt thereof is directed to be placed on record by next date of hearing.

Put up on 30-08-2025 for compliance regarding deposit of costs and for final arguments.

The date is given as per mutual consent of both the sides.

(VIDYA PRAKASH)
District Judge (Commercial Court)-01
Central District/THC/Delhi
06-08-2025_(r)