

CS No. 252/2019

Intizar Ahmad v. Ishtiaq Hussain and anr.

05.09.2022

At 12.00 Noon.

File taken up on application of plaintiff under Section 114 of CPC r/w Order 47 CPC.

Present : Counsel Mr. Faiz for Plaintiff.

Ld. Counsel for plaintiff by way of this application has prayed for review of Order dated 17.08.2022 passed by this Court. Ld. Counsel states that by said Order, application of plaintiff under Section 151 CPC was dismissed. Ld. Counsel states that Order is wrongly passed so far as the relationship of Mukhtiar Hussain with the plaintiff is concerned and the same needs to be revisited. Counsel submits that there are various contentious issues which were overlooked by this Court as also mentioned in para no. 8, 9, 10 and 11 of the application. It is submitted that this Court has also wrongly directed to pay the plaintiff advoluerum court fees as per valuation and counsel therefore prays for recalling of Order dated 17.08.2022.

I have heard submissions of counsel for plaintiff as well as the law regarding Review. In S. Nagraj & Ors. vs. State of Karnataka & Anr., 1993 Supp (4) SCC 595, Hon'ble Apex Court considered the scope of review and observed as under:

"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... .. 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 the true state of circumstances has been held to be sufficient ground to exercise the power."

While deciding the above case, the Hon'ble Supreme Court placed reliance upon a large number of judgments, including in *Raja Prithwi Chand Lal Choudhury vs. Sukhraj Rai & Ors.*, AIR 1941 FC 1; and *Rajunder Narain Rae vs. Bijai Govind Singh* (1836) 1 MOO PC 117. The same view was reiterated by the Hon'ble Apex Court in *Oriental Insurance Co. Ltd. & Anr. vs. Gokulprasad Maniklal Agarwal & Anr.* (1999) 7 SCC 578.

Law is thus settled that purpose of review is rectification of an order which stems from the fundamental principle that the justice is above all and it is exercised only to correct the error which has occurred by some accident, without any blame.

In *Delhi Administration vs. Gurdeep Singh Uban*, AIR 2000 SC 3737, the Hon'ble Apex Court has deprecated the practice of filing review application observing that review, by no means, is an appeal in disguise and it cannot be entertained even if application has been filed for clarification, modification or review of the judgment and order finally passed for the reason that a party cannot be permitted to circumvent or bypass the procedure prescribed for hearing a review application.

In *Haridas Das vs. Smt. Usha Rani Banik & Ors.*, AIR 2006 SC 1634' *Harinagar Sugar Mills Ltd. vs. State of Bihar & Ors.*, (2006) 1 SCC 59; and *Orissa Hydro Power Corporation Ltd. vs. Satwant Singh Gill*, (2006) 9 SCC 663, the Hon'ble Apex Court has been pleased to hold that review does not lie on the ground that applicant could not highlight all the aspects of the case or could have argued more forcefully or cited binding precedents to get a favourable judgment.

The plaintiff's plea primarily is that the Order in question is wrongly passed by this court. I observe that the plaintiff has failed to bring anything on record to show the Order was passed on account of some mistake or error apparent on the face of the record.

In *Parsion Devi and ors vs. Sumitri Devi and ors. (1997) 8SCC 715*, it was observed that there was a clear distinction between an erroneous decision and error apparent on the face of record. While the first could be corrected by the Higher Forum, latter could only be corrected by the exercise by way of review jurisdiction.

Recourse to review application in the facts and circumstances is not permissible. There is no substance in the application as the plaintiff has failed to disclose any ground for 'Review' under Section 114 of CPC r/w Order 47 Rule 1 CPC or as postulated in the law to entertain the present application. A remedy by way of an application for review of order is entirely misconceived. The same deserve dismissal.

The application of plaintiff stands dismissed with costs of Rs.5,000/- to be deposited in DLSA (Shahdara).

Put up on **date fixed**.

(RAVINDER BEDI)
Additional District Judge -02
Shahdara, Karkardooma Courts,
Delhi: 05.09.2022