

22.11.2024

Present: Sh. Anuj Jain, Ld. Counsel for plaintiff along with husband of plaintiff.

Sh. Atul Sharma, Ld. Counsel for defendant no.1 (through VC).

Sh. N K Aggarwal, Ld. Counsel for defendant no.2 along with defendant no. 2.

Sh. Yash Bhardwaj, Proxy counsel for Sh. N C Sharma, Ld. Counsel for defendant no. 3.

1. Ld. Counsel for plaintiff submits that, he has filed an application u/s 151 CPC for withdrawal of earlier application u/s 151 CPC for recalling of order dt. 17.05.2024.

2. **Heard. Application u/s 151 CPC for recalling of order dt. 17.05.2024 stands dismissed as withdrawn. Another application u/s 151 CPC stands disposed off accordingly.**

3. Record reveals that, review petition u/o XLVII r/w Sec. 151 CPC for recalling of order dt. 17.05.2024 is also pending for disposal.

4. Ld. Counsel for non-applicants submits that, they are not inclined to file any reply to above application and would straightway argue the same.

5. Submissions heard. Record perused.

6. By way of present application plaintiff is seeking review of order dt. 17.05.2024 mainly on the ground that, fair opportunity to lead evidence was not given to plaintiff and same was closed in unjustified manner. It is submitted that, on 17.05.2024 plaintiff came to know about demise of summoned witness namely Sh. S K Khanna but, no opportunity was given to lead substituted evidence. It is further submitted that, applicant had disclosed various facts to the IO but, no investigation was done rather, *Kalandara* proceedings initiated against husband of plaintiff vide DD no. 24 of 31.07.2000 and he was compelled to be in custody for one day. It is submitted that, by some RTI applicant came to know that, impugned stamp papers dt. 02.08.2000 were valued for Rs. 2/- and sold by vendor S K Khanna to some Muslim person. It is further submitted that, plaintiff/applicant has collected certified copy of impugned documents from SR office and there was material discrepancy in the document available with the IO. It is further submitted that in the last month of May 2024 plaintiff came to know through IO about whereabouts of notary i.e. Arun Kumar Gupta whose stamp has been affixed on impugned documents. It is further submitted that, no opinion has been given by SPB, Rohini on impugned documents. It is further submitted that, on 17.05.2024 witness Devak Ram Sharma could not appear due to some personal exigencies and PE was closed.

7. Ld. Counsel for plaintiff submitted that, *justice in hurry should not be justice buried*. Lastly, it is submitted that, plaintiff wishes to examine 2-3 more witnesses and would not take any adjournment for PE.

8. *Per contra*, Ld. Counsel for defendants vehemently opposed the present application. It is submitted that, averment made in the application are beyond the pleadings as well as beyond the scope of order XLVII CPC. It is further submitted that, earlier as well, plaintiff has filed review application to

summon two witnesses which was infact allowed by Ld. Predecessor of this court vide order dated 09.09.2019. It is also submitted that, vide same order application moved by defendant no. 2 u/s 151 CPC for dropping of evidence by way of affidavit of Sh. Devak Ram Sharma was dismissed. But, no steps were taken by plaintiff to examine said witness for number of years. Lastly, it is submitted that, present application may be dismissed with cost as same is filed without any merit.

9. It is well settled law that, scope of review jurisdiction is narrow and unless and until there is patent error in the order which is visible on the face of it, the review jurisdiction cannot be exercised. The review cannot be treated like an appeal in disguise. Any person considering himself aggrieved by an order can file review petition in following events:

- a. On the discovery of new and important matter for evidence which, after the exercise of due diligence, was not within applicant's knowledge or could not be produced by him at the time when order was made; or
- b. On account of some mistake or error apparent on the face of the record; or
- c. For any other sufficient reason, desire to obtain a review of the order passed against him.

10. In *Col. Avatar Singh Sekhon v. Union of India and Ors.*<sup>1</sup>, Hon'ble Supreme Court of India 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*

---

<sup>1</sup> 1980 Supp SCC 562

*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 Anr. v. Sheikh Habib MANU/SC/0064/1975 : (1975) 1 SCC 674 this Court observed:*

*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.’*

11. This court carefully gone through the entire material placed on record as well as the proceedings till date and is of the opinion that, ingredient of review does not meet out. No doubt, *justice in hurry should not be justice buried* but, at the same time *Justice delayed is justice denied* which highlights the importance of timely justice in a fair and just society. Where a party is acting in a recalcitrant fashion, and refusing/avoiding to make the witness available for examination or cross-examination on repeated occasions without due justification, the court may close the party's right to lead evidence. Record reveals that, ample opportunities were already granted to the plaintiff to lead PE. Infact, after closure of PE, no DE was led by defendant and matter is at the stage of final arguments. Moreover, perusal of RTI dt. 18.05.2018 reveals that, factum of issuance of stamp paper @Rs. 2/- was well in the knowledge of plaintiff as such same cannot amounts to be discovery of new evidence. Further, Ld. Counsel for plaintiff failed to give any specific detail of witnesses to be called or relevancy thereof.

12. In *The State of West Bengal and others v. Kamal Sengupta and others*<sup>2</sup> Hon'ble Supreme Court of India had laid down the conditions

---

<sup>2</sup> 2008 (8) SCC 612

required for seeking review of the judgment on the ground of "discovery of new matter or evidence" as follows:

*'14. 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...'*

13. Thus, considering facts and circumstance of present case, this court doesn't find any infirmity in order dt. 17.05.2024. Hence, present Review Petition stands dismissed.

14. Now, put up for final arguments on 21.02.2025. Longer date is given at request of Ld. Counsel for plaintiff as he is inclined to challenge the present order in Appellate Court.

(SHILPI M JAIN)  
DJ-05 (SW)/Dwarka Courts  
New Delhi: 22.11.2024 (sr)