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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RC.REV. 104/2018**

BINA ROY

.....Petitioner

Through: **Mr. Pavan Duggal, Advocate.**

versus

HANSA SONI & ORS

.....Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **13.08.2025**

CM APPL. 49656/2025 [Recall]

1. The Registry is directed not to list the Applications which have multiple page numbers on the same page.
2. The Application seeks recall of the order dated 24.12.2024 passed by this Court [hereinafter referred to as "Order in Review"].
3. Learned Counsel for the Petitioner submits that the error apparent is appearing in Paragraph 8 of the Order in Review where it is stated that the Leave to Defend Application was filed before the learned Trial Court.
4. The Order in Review was passed in a Petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as "DRC Act"] seeking to challenge an order dated 16.01.2018 passed by the learned Trial Court [hereinafter referred to as "Impugned Order"]. By the Impugned Order the Application for eviction was allowed and recovery of possession was directed by the learned Trial Court.
5. Learned Counsel for the Petitioner submits that it is the case of the Petitioner that she was never served, and thus, Paragraph 8 of the Order in



Review suffers from a factual inconsistency. Reliance by learned Counsel for the Petitioner is placed on the Application filed under Section 25B(4) of the DRC Act before the learned Trial Court.

6. Paragraph 3 of the Impugned Order sets out that the Eviction Petition was although filed in the year 2008, despite service, the Leave to Defend was not filed in time. It further sets out that the learned Trial Court examined the matter and since the Petitioner was served by publication on 08.03.2011 and the Leave to Defend was filed on 04.05.2017, the Leave to Defend Application was dismissed.

7. Paragraph 3 of the Impugned Order is set out below:

*“3. It is pertinent to mention at the outset that no leave to defend application was filed on behalf of the respondent no.2 and 4. So far as the respondent no.1 is concerned, as per the record, respondent no.1 was served through publication on 08.03.2011. **An application u/o 9 rule 7 CPC was filed on behalf of the respondent no.1 on 05.12.2015 which was dismissed on 08.02.2017.** It is clear that the respondent no.1 was served through publication on 08.03.2011 and also that he was aware of the pendency of the present petition at least on 05.12.2015 when he had filed the application u/o 9 rule 7 CPC. **However, the leave to defend application was filed by the respondent no.1 on 04.05.2017 which is way beyond the period of 15 days from the date of service of summons.** Thus on this ground alone leave to defend application filed on behalf of the respondent no.1 is liable to be dismissed. However, on merits also bare perusal of the application shows that not a single triable issue has been raised by the respondent no.1 in his application and thus the application filed on behalf of the respondent no.1 stands dismissed.*

[Emphasis Supplied]

7.1 Paragraph 3 of the Impugned Order sets out that Petitioner was served through publication on 08.03.2011, thereafter an Application under Order IX Rule 7 of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”] was filed by the Respondents on 05.12.2015 which was dismissed on 08.02.2017. It further states that the Petitioner was aware of the pendency



of the Petition at least on 05.12.2015 when the Application under Order IX Rule 7 of the CPC was filed, and thus, the Leave to Defend filed on 04.05.2017 was beyond the statutory period of 15 days.

8. The Application under Order IX Rule 7 of the CPC has also been placed on record before the Court. The Application as placed on record is undated and the Affidavit is not authenticated. However, given the finding of the Learned Trial Court that the Application was filed on 05.12.2015, the Court finds no reason to dispute the same.

9. Paragraph 8 of the Order in Review records exactly this contention, the only change being the Application under Order IX Rule 7 of the CPC is not mentioned therein. Paragraph 8 of the Order in Review is set out below:

“8. The record shows that the Eviction Petition was filed in the year 2008 by the Petitioner and that despite service on the Petitioner by publication, the leave to defend was not filed on time. The learned Trial Court examined the matter and held that since the Petitioner was served by publication on 08.03.2011 and the leave to defend Application was filed on 04.05.2017, this ground alone entitles the leave to defend application to be dismissed. However, in addition the learned Trial Court also undertook an examination on the merits of the case and found that no triable issue was raised by the Petitioner/tenant. Subsequently, the Impugned Order was passed allowing the Eviction Petition filed by the Respondents.”

9.1 Given the finding of the learned Trial Court which is reproduced in paragraph 7 above, there is no infirmity in paragraph 8 of the Order in Review.

10. It is settled law that the power of review cannot be exercised by the Court merely to re-examine a judgment which has already been examined by this Court. The Supreme Court in the case of **Kamlesh Verma v. Mayawati**; (2013) 8 SCC 320 has held that the application for review is entertained only under the grounds mentioned in Order XLVII Rule 1 of the Code of Civil



Procedure, 1908 including on account of a mistake or an error apparent on the face of the record. A review proceeding cannot be equated with an original hearing unless there is a glaring omission or similar grave error which leads to a miscarriage of justice, the power cannot be exercised. The relevant extract of the ***Kamlesh Verma*** case is reproduced below:

*“18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. **A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. [(2006) 5 SCC 501] , held as under: (SCC pp. 504-505, paras 11-12)***

“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.

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.”

*19. **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. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.***

Summary of the principles

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 be 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” have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulse Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] 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. [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

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 justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard 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 negated.”

[Emphasis Supplied]

11. No error has been shown to the Court which would require this Court to exercise jurisdiction under its powers for review, given the settled law as



discussed above.

12. The Application accordingly dismissed.

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13. List before the Roster Bench on the date already fixed, i.e., 18.08.2025.

14. The parties shall act based on a digitally signed copy of the order.

TARA VITASTA GANJU, J

AUGUST 13, 2025/pa/ha