IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble **Justice Prasenjit Biswas**

R.V.W. 349 of 2024
with
CAN 2 of 2024
In
C.O. No. 2815 of 2022

M/s. Akshara Niwas Consortium & Ors.

-Versus-

Mrs. Reeta Trehan

For the Petitioners : **Mr. Zeeshan Haque,**
Mr. Aditya Kanodia,
Ms. Shreya Trivedi.

For the Opposite Party : **Mr. Avirup Mondal,**
Ms. Ahana Ghosh Mondal.

Hearing concluded on : **02.05.2025**

Judgment On : **01.08.2025**

Prasenjit Biswas, J:-

1. This is an application seeking for review of an order dated 23.08.2024 passed by this Bench.

2. The civil revisional application being C.O. 2815 of 2022 was disposed of by this Court on 23.08.2024. In that civil revisional application liberty was given upon the parties to refer the matter before the arbitrator as made under Article 14 of the agreement dated 12th day of December, 2013 within three weeks from the date of passing of the order. The order passed by this Bench dated 23.08.2024 is assailed in this review petition filed on behalf of the petitioner.

3. Mr. Zeeshan Haque, learned Advocate for the petitioner said that there is apparent error on the face of the record wherein the order under review was passed ignoring the issue in revisional application. It is said by the learned Advocate that an error of mistake is apparent on the face of the order under challenge may be appeared from the following facts:

i) By the order under challenge the Court was pleased to grant liberty to the parties to refer the matter to arbitration in terms of clause 14 of the agreement dated December 12, 2013 which had not been pleaded or urged before the learned Trial Court.

ii) The order was passed by this Court without appreciating the pleadings filed and the arguments advanced by the parties before the learned Trial Court.

iii) The plea of arbitration clause between the parties was never urged before the learned Trial Court and thus, the said plea

ought not to have been considered by this Court while passing the order under challenge.

iv) As per Section 8 of the Arbitration and Conciliation Act, 1996, an application to refer disputes to arbitration should be made at the earliest, i.e. before submission of the first statement on the substance of the dispute.

4. It is said by the learned Advocate that after filing of the Money Suit being no. 12/2016, the applicants/defendants have entered appearance in that case and filed written statement in the same but no plea of arbitration was taken on behalf of them. Once the defendants in the suit filed their written statement there would be no scope for either of the parties to take recourse to arbitration. Neither of the parties made an application before the learned Trial Court at any point of time for referring the disputes between the parties under the provisions of Section 8 of the Arbitration and Conciliation Act, 1996. Accordingly, the parties had clearly abandoned and/or waived their right to seek referring of the disputes through arbitration. So, the impugned order an error has been crept up on the face of the record. The matter was referred before the arbitrator, when both the parties to the arbitration agreement waived/abandoned their right to refer the matter before the arbitrator.

5. Mr. Haque further said that the respondent earlier filed a complaint case before the State Consumer Disputes Redressal Form, being CC/279/2014 which was disposed of with giving liberty to file a fresh suit on

the self-same cause of action but it was not brought to the notice of this court at the time of passing of the impugned judgment dated August 23, 2014. Although, the respondent obtained liberty to file a consumer complaint before the appropriate forum but they had chosen to file Money Suit No. 12 of 2016 before the Trial Court and that fact was also not brought to the notice of the Court. It is said that the learned Trial Court had declined to grant leave to this respondent to file a fresh suit on the self-same cause of action, despite that this order was passed to grant liberty upon the parties to refer the matter before the arbitrator. The learned Trial Court was not satisfied with the grounds seeking withdrawal of the Money Suit No. 12 of 2016 and explicitly refused to give permission to file a fresh suit on the self same cause of action and such discretionary order may not be interfered by permitting the parties to refer the dispute to arbitration.

6. In support of his contention, learned Advocate for the petitioner placed reliance upon the following decisions rendered by the Hon'ble Apex Court and the High Court:

i) (1954) 2 SCC 42 (Moran Mar Basselios Catholicos & Anr.-vs- Most Rev. Mar Poulose Athanasius & Ors.)

ii) (2015) 15 SCC 602 (State of Jammu and Kashmir-vs-R.K. Zalpuri & Ors.)

iii) (2011) 5 SCC 532 (Booz Allen & Hamilton Inc.-vs. SBI Home Finance Ltd. & Ors.)

iv) 1949 SCC OnLine FC4 (Sir Hari Sankar Pal & Anr.-vs- Anath Nath Mitter & Ors.)

v) 1966 SCC OnLine Cal 103 (Tinkari Sen & Ors.-vs- Dulal Chandra Das & Ors.)

vi) 2025 SCC OnLine Bom 815 (Kornal Kushal Kamble & Anr.-vs- Kushal Kaluram Kamble & Anr.)

vii) An unreported decision rendered by the Division Bench of this Court dated 22.04.2024 (Pramod Kumar Tewari & Anr.-vs- Trimurti Complex Pvt. Ltd.

7. Per contra, learned Advocate for the opposite party submitted that the powers of review cannot be exercised as an inherent power nor an appellate power can be exercised in the guise of power of review. It is said by the learned Advocate that a mere error whether factual or legal is not sufficient to invoke review jurisdiction and in order to attract the provision of Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case which is misplaced in the present case.

8. In support of contention, the learned Advocate placed reliance upon the decision rendered by the Hon'ble Apex Court in the case of **Sanjay Kumar Agarwal vs State Tax Officer & Anr.**[1]. It is said by the learned Advocate that in view of the above referred report of the Apex Court the well considered

[1] **(2024) 2 SCC 362**

judgment sought to be reviewed, does not fall within the scope and ambit of review. It is said that the learned counsel for the review petitioners have failed to make out any mistake or error apparent on the face of the record in the impugned order and have failed to bring the case within the parameters laid down by the Apex Court in various decision for reviewing the impugned judgment.

9. The learned Advocate also cited a decision rendered by the Hon'ble Apex Court in the case of **Perry Kansagra –vs- Smriti Madan Kansagra[2].** It is brought to the notice of this Court about two paragraphs i.e. 14 and 15 of the said report and said that the learned Apex Court held that an error which is not self-evident and has to be detected by the process of reasoning can hardly be said to be an error apparent on the face of the record justifying to quote to exercise the power of review under Order 47 Rule 1 CPC. It is said by the learned Advocate that the Apex Court made it clear that it is not permissible even for an erroneous decision to be reheard and corrected and the review petition must be considered taking into note that it has a limited purpose and cannot be allowed to be an appeal in disguise.

10. I have considered the rival submissions advanced by both the parties and have gone through all the decisions as cited by the parties to the case. I have also consulted with the materials on record.

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[2] **(2019) 20 SCC 753**

11. The power of a Civil Court to review its judgment/decision is traceable in Section 114 CPC and the grounds on which review can be sought are enumerated in Order 47, Rule 1 CPC, which imposes definitive limits to the exercise of power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after 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 because it would be the province of a Court of appeal**.**

12. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review not the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. So, the powers of review cannot be exercised as an inherent power, nor appellate power can be exercised in the guise of the power of review. The 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.

13. So, a mere error whether factual or legal is not sufficient to invoke review jurisdiction. In order to attract the provisions of Order 47 Rule 1 of the Code, the error/ mistake must be apparent on the face of the record of the case. As the phrase suggests, an error or mistake to be a ground to seek review must be such, which may strike one on a mere looking at the record and would not require a long-drawn process of reasoning to reach the conclusion that there has been a mistake or error. There is narrow difference which exists between an appeal and a review. The courts exercising review jurisdiction have been time and again cautioned to not to walk on the path of reassessment of the judgment while hearing review application. While doing so, the courts have evolved "multiple facets" explaining scope and extent of "mistake or error apparent on the face of record" as a ground for seeking review.

14. The power of review can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of the diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for

correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it.

15. In **Sanjay Kumar Agarwal** (**supra**), the Hon'ble Apex Court held that a well considered judgment sought to be reviewed does not fall within the scope and ambit of the review unless the learned counsel for the review petitioners, they succeeded to make out any mistake or error apparent on the face of the record in the impugned judgment and succeeded to bring the case within the parameters laid down by the Apex Court in various decisions for reviewing the impugned judgment.

16. It is profitable to quote the observation of the Hon'ble Apex Court in that report as held at paragraph 16 which is as follows:

> *"16. The gist of the aforestated decisions is that:*
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> *16.1. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.*
>
> *16.2 A judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.*
>
> *16.3. 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 record justifying the court to exercise its power of review.*

16.4. In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected".

16.5. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise."

16.6. Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

16.7. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

16.8. Even the change in law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review whether the review petitioners have been able to make out any case within the ambit of Order 47 of the Supreme Court Rules, read with Order 47 CPC, for reviewing the impugned judgment.

17. The Hon'ble Apex Court in case of **Perry Kansagra** (supra), inter alia, held that the review Court does not sit in an appeal over its own order and a rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment was signed and pronounced it should not be altered. It is further held by the Apex Court in the said report that it is

trite that exercise of inherent jurisdiction is not to be invoked for reviewing any order. 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. So, it is not permissible under Order 47 Rule 1 CPC to be reheard and corrected for erroneous decision in the guise of review petition.

18. The object and ambit of power of review has been explained by the Supreme court in **Shri Ram Sahu (dead) through LRs and Others vs. Vinod Kumar Rawat and others**[3], in following terms:-

> *"10. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the court, which may order or pass the decree. From the bare reading of Section 114CPC, it appears that the said substantive power of review under Section 114CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said section imposed any prohibition on the court for exercising its power to review its decision. However, an order can be*

[3] **(2021) 13 SCC 1**

reviewed by a court only on the prescribed grounds mentioned in Order 47 Rule 1CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power be exercised in the guise of power of review."

19. A perusal of the aforesaid decision of the Apex Court it leaves no doubt that the Courts have repeatedly held that the jurisdiction and scope of review is not that of an appeal. It is a reluctant resort only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. So, the mistake has to be such which is apparent and manifest on the face of the record and if not corrected, would result into miscarriage of justice. Review is an exception to the Rule that once the Court has pronounced the judgment and signed it, it has no jurisdiction to alter it and it ceases to have control over it. It is important to note that the power of review under Section 114 is not unlimited the Court of review the order merely because the parties was dissatisfied with it or because this has been discretionary that another view could have been taken on the same facts and evidences. I have already said that the power of review can only be exercised in cases where the Court finds that there was some error or mistake that needs to be rectified.

20. Moreover, the power of review under Section 114 of the CPC is subject to certain limitations in terms of time and grounds. However, an order can be

reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC which are threefold i.e., discovery of a new and important evidence or matter which after exercising due diligence was not in the knowledge of the person seeking review; mistake or error apparent on the face of record and any other ground which analogous to the aforesaid two grounds.

21. In a recent decision of the Hon'ble Apex Court in case of **S. Murali Sundaram-vs- Jothibai Kannan & Ors.**[4], it was reiterated that rehearing of the matter in a review application is not maintainable under the eye of law as review is not appeal in disguise. In the said report it is held by the Apex Court that the power of review can be exercised for correction of a mistake but not to substitute a view and such power can be exercised within the limits can be statute dealing with the exercise of power.

22. It is observed the Apex Court in the above report that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. So, scope of review under Order 47 Rule 1 CPC read with Section 141 CPC is limited and under the guise of review, the petitioner cannot be permitted to reargue question which have already been addressed and decided. 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.

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[4] **(2023) 13 SCC 515**

23. After going through the decision rendered by the Apex Court as stated above I find that the grounds as taken by the petitioner to review the impugned order is not sustainable under the eye of law. As the path on which the review Court has to work upon is indeed very narrow and guarded by the definitive limits. The grounds taken by the petitioner can be said to be discovery of new and important matter or evidence which after exercising of due diligence was not within their knowledge and could not be produced at the time when the order was passed. The learned Advocate failed to assign any some mistake or error apparent on the face of the record for which the impugned order is required to be reviewed. A mere error whether factual or legal as pointed out by the learned Advocate for the petitioner is not sufficient to invoke review jurisdiction. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be error apparent on the face of the record justifying exercising power of review under Order 47 Rule 1 CPC. The power of review is to be exercised for correction of mistake and not for substitution of view and a review cannot be claimed for fresh hearing of the matter or for correction of a view taken on earlier point of time. The error of law or fact of which correction is being sought must stair in the face without needing any elaborate argument for establishing the same. The decision cited by the learned Advocate for the petitioner does not lend much support to the submission made by him.

24. Under such circumstances, I find no reason to review the order dated 23.08.2024. There is no error apparent on the face of the record nor have any

grounds been made out by the petitioner which would persuade me to review the order passed in connection with C.O. 2815 of 2022.

25. Therefore, the application filed on behalf of the petitioner seeking review of the order dated 23.08.2024 is hereby **dismissed** by without any order of costs.

26. Accordingly, the review petition, being R.V.W. 349 of 2024 along with other connected applications if any, are hereby dismissed and disposed of.

27. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)