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

\+ **Review Pet. No.254/2017 & CM No. 23490/2017**

in RFA No. 394/2017

% *Judgment Reserved on: 05.09.2017*
Judgment Pronounced on: 19.12.2017

AMAR NATH ..... PETITIONER
Through: Mr. J.M. Bari and Ms.Shweta Bari, Advocates

Versus

JEE RAM & ANR. ..... RESPONDENTS
Through: Mr. D.K. Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. By way of the present petition, the petitioner seeks review of the judgment dated 15th May 2017 passed in the RFA No. 394/2017. This petition is one of the classic examples of how the judicial process is being misused by unscrupulous litigants.

2. The Petitioner herein is the son of the Respondents. The Petitioner is 52 years of age and thus the Respondents must be more than 75 years of age. The suit of the respondents for

possession against the petitioner in respect of their property consisting of two rooms, latrine, bath-room and balcony on the first floor in the premises no. 64/1, Shakar Pur Khas, Delhi-110092, was decreed vide judgment dated 22.03.2011. The petitioner was restrained from transferring any portion or parting with any portion of the suit premises and from selling, transferring or delivering the possession to any third party or creating any third party interest. The petitioner herein was also directed to pay mesne profit @ Rs.4,400/- per month to the respondents w.e.f. 30.11.2007 till he delivers the possession of the property to the respondents. It was also directed that along with that the petitioner shall pay pendente lite and future interest @9% per annum on decretal amount till the realization of the decretal amount and possession is handed over to the respondents.

3. The Petitioner feeling aggrieved by the judgement and decree of the trial court challenged the impugned judgment and decree by RFA No. 355/2011 which was dismissed in default by this court on 21.11.2013. The Petitioner thereafter filed CM No.932/2014 for restoration of the RFA No. 355/2011, which was considered by this Court on 22.04.2014. It is important to note that during hearing of the aforesaid CM, it was pointed out that there was a settlement between the parties before the Executing Court in execution no. 13/14. The Executing Court vide order dated

21.03.2014 recorded that the Petitioner herein had agreed to vacate the suit property on or before 01.10.2014 and had further made a part payment of Rs.60,000/- towards the decretal amount and the Petitioner had undertaken to pay the balance decretal amount of Rs.1,70,000/- in terms of the settlement. This court had taken on record the order dated 21.03.2014 passed by the Executing Court and accordingly CM No. 932/2014 for restoration of RFA No. 355/2011 was disposed of on 22.04.2014

4. Subsequently, the Petitioner herein filed CM No. 34856/2016 in RFA 355/2011 to recall order dated 22.04.2014 pleading that there was no lawful agreement between the parties. This CM was dismissed by this court on 23.09.2016.

5. The respondents thereafter had filed an application under Section 152 of Code of Civil Procedure, 1908 for modification of the decree to incorporate the details of the property in question in the decree-sheet and after hearing both the parties, the application of the respondents/plaintiffs was allowed on 22.01.2016. Subsequently the Petitioner filed CM (M) 371/2016 challenging the order dated 22.01.2016. This CM (M) 371/2016 was dismissed as withdrawn on 25.04.2016 by the Petitioner.

6. Despite the order dated 22.01.2016, amended decree was not drawn up by the learned Additional District Judge which led the respondents to move another application before the trial court

on 23.12.2016 and the trial court passed the order for preparation of the amended Decree on 04.02.2017 and on that day itself the amended Decree sheet was prepared. After the amended decree sheet was prepared on 04.02.2017, the Petitioner filed RFA No. 394/2017 pleading that the amended decree gives him fresh cause of action to file the appeal, which came to be dismissed vide judgement dated 15.05.2017 by this Court.

7. The petitioner seeks review of the judgment dated 15.05.2017 mainly on the ground:

   i. That the RFA No. 355/2011 filed by the Petitioner against the impugned judgment and decree which has been dismissed in default on 21.11.2013 is not a bar in maintaining the second/present RFA. The Petitioner has relied upon (i). Surajdeo Narain Singh & Anr. V. Pratap Rai & Anr.; AIR 1923 Patna 514 & (ii). Vediyeri Chandroth Reghunathan v. Alora Janu.; AIR 1995 Ker 334 and states the aforesaid precedent were not considered in the judgment dated 15.05.2017.

8. In order to appreciate the aforesaid argument advanced by the learned counsel for the petitioner, it would be necessary to refer the relevant provision i.e. Order XLVII, Rule 1, CPC 1908, therefore, the same is reproduced below:

"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, 6r 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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation : The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any

other case, shall not be a ground for the review of such judgment.

Thus in view of the above, the following grounds of review are maintainable as stipulated by the statue:

i) Discovery of new and important matter or evidence which, after exercise of due diligence, was not within knowledge of the Petitioner or could be produced by him;

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

iii) Any other sufficient reason

9. The **Hon'ble Supreme Court** in **Parsion Devi v. Sumitri Devi 1997 (8) SCC 715** while elaborating the scope of review under Order XLVII Rule 1, held as under:

> "9.Under Order 47 Rule 1 CPC a judgment may be open to review inter alia **if there is a mistake or an error apparent on the face of the record. 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. In exercise of the jurisdiction under Order 47, Rule 1 CPC **it is not permissible for an erroneous decision to be "reheard and corrected". A review petition**, it must be remembered has a limited purpose and **cannot be allowed to be "an appeal in disguise"**."

10. The **Hon'ble Supreme Court** in **Lily Thomas v. Union of India (2000) 6 SCC 224**, summarised the scope of the power of review in the following words:

> "56. 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."

11. The Apex Court in **Haridas Das vs. Usha Rani Banik and others 2006 (4) SCC 78**, further interpreted the scope of power of court to review under Order XLVII of CPC as under:

> "13.In order to appreciate the **scope of a review**, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it "may make such order thereon as it thinks fit". The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a

rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection."

12. The **Hon'ble Supreme Court** in **Union of India (UOI) v. Sandur Manganese and Iron Ores Ltd. & Ors. (2013) 8 SCC 337** summarized the law relating to the scope of review under Order XLVII Rule 1 of the Code of Civil Procedure as under:

> "23.This Court, on numerous occasions, had deliberated upon the very same issue, arriving at the conclusion that 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 of CPC.
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> 24. In the present case, the error contemplated in the impugned judgment is not one which is apparent on the face of the record rather the dispute is wholly founded on the point of interpretation and applicability of Section 11(2) and 11(4) of the MMDR Act. 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. Hence, in review jurisdiction, the court shall interfere only when there is a glaring omission or patent mistake or when a grave error has crept in the impugned judgment, which we fail to notice in the present case."

13. The term 'mistake or error apparent' by its very meaning implies an error which is apparent on the face of the record of the case and does not require comprehensive examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order XLVII Rule 1 CPC. An order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. In review jurisdiction, the court shall interfere only when there is a glaring omission or patent mistake or when a grave error has crept in the impugned judgment.

14. The submissions and issues advanced by the Counsel of the Petitioner are erroneous on the face of law and cannot sustain. Error considered 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. I have not found any mistake or error apparent on the face of the record requiring a review. No such error has been pointed out by the learned counsel for the petitioner seeking review of the judgment. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view and considering the same the Petitioner cannot be permitted to re-argue the very same points. No sufficient cause has been shown for reviewing the judgment. As the point is already dealt with and answered, the petitioner is not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

15. All pleas raised before this Court were in fact addressed for and on behalf of the petitioner which, after considering those pleas, the judgment in the RFA No. 394/2017 was passed.

16. Therefore, the petitioner has not made out any case within the meaning of Order XLVII Rule 1 of the CPC for reviewing the judgment dated 15.05.2017. The petition is misconceived and

bereft of any substance therefore the present review petition is dismissed along with pending CM No.23490/2017.

(VINOD GOEL)
JUDGE

DECEMBER 19, 2017
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HIGH COURT OF DELHI

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