HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
…

RP no.03/2024

Reserved on: 09.10.2024

Pronounced on:19.11.2024

Kewal Krishan

…….Petitioner(s)

Through: Mr. Suraj Padha, Advocate

Versus

Sham Lal

……Respondent(s)

Through: Mr Varun Raina, Advocate

***CORAM*:**
HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

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JUDGEMENT

1. Review of the Order dated 16th December 2023, passed by this Court in CM(M) no.122/2022 titled as Kewal Krishan v. Sham Lal, is sought on the grounds made mention of in the instant petition.
2. I have heard counsel for parties and considered the matter.
3. Learned counsel for petitioner would contend that it was the case of petitioner that order dated 6th August 2022 is against the law as interpreted by various courts with respect to the scope of Order VIII Rule 9 of the Code of Civil Procedure and that the proposed Replica contradicts the main plaint inasmuch as the date of commencement of tenancy in the plaint is specifically mentioned with effect from 1st January 2010, but petitioner exposed the mischief of respondent/ plaintiff by placing on record a copy of demand draft of Rs.8.00 Lakhs

in 2009 in they name of respondent towards the purchase of subject matter of suit, respondent sought to explain it by terming it as arrears of rent by proposed Replica. It is also stated that any order of trial court which is manifestly unjust and causes miscarriage of justice is open to supervisory scrutiny of the High Court under Article 227 of the Constitution of India. It is also averred that the replica can never be permitted in law as it contravenes the case set up by plaintiff originally and therefore such a replica instead of explaining the contents of written statement is in fact amending the contents of plaint, which certainly occasion serious miscarriage of justice to petitioner who has exposed his defence to the original case set up and not to the case now being set up by proposed replica.

4. It is pertinent to mention here that while considering abovementioned contentions, the scope and ambit of Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure is to be taken into consideration.

5. The grounds on which review can be sought are enumerated in Order XLVII Rule 1 CPC, which reads as under:

> "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, or 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 of the court which passed the decree or made the order."

6. An application for review would lie, *among others*, when an order suffers from an error apparent on the face of record and permitting the

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same to continue would lead to failure of justice. Limitations on exercise of power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In absence of any such error, finality attached to the judgment/order cannot be disturbed.

7. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake.

8. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

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9. Nevertheless, in view of contentions of counsel for review petitioner, it would be appropriate to first reproduce impugned judgement here:

> "1. The order 06.08.2022 passed by the Court of learned Principal District Judge, Reasi, whereby plaintiff/respondent has been allowed to file replica has been challenged in the instant petition filed under Article 227 of the Constitution of India.
>
> 2. The aforesaid order is challenged by the defendant/petitioner herein precisely, on the ground that the same is illegal, erroneous and has caused miscarriage of justice. The application allowed by the trial Court does not whisper about which part of the written statement required explanation by filing replica. The further ground taken by the defendant/petitioner is that

trial Court has ignored his contention and leave has been granted against the settled principles of law.

3. Briefly stating the facts of the case are that the plaintiff-respondent herein filed a suit for eviction of the petitioner/defendant from suit property and also for recovery of arrears of rent. He claimed in the suit that the suit property was given to the defendant/petitioner by him by virtue of oral tenancy when defendant/petitioner approached him for taking on rent the said building in December, 2009 and the suit property was let out to him w.e.f. 01.01.2010. The plaintiff/respondent in the plaint claimed that defendant/petitioner after taking the suit property on rent did not pay the rent to him despite demands. The plaintiff/respondent in the plaint had taken a specific plea that the suit property has been gifted to him by his father, regarding which a gift deed was executed and registered on 0102.1982.

4. The plaintiff/respondent thus, in the plaint claimed to be the landlord and defendant/petitioner as tenant on payment of rent. The defendant/petitioner in his written statement while contesting the claim of the plaintiff/respondent denied the landlord and tenant relationship and he took up a ground that the shops adjoining was purchased by his brother Shub Kumar who raised the construction. Thus, he claimed that Shub Kuamr is the owner of the property in question, therefore, on such ground he has claimed dismissal of the suit. The ground which has been taken while denying the landlord and tenant relationship is that plaintiff/respondent is not the owner of the property in question, but it is his brother-Shub Kumar who is the owner of the property.

5. After filing of the written statement, the plaintiff/respondent made an application under Order 8 Rule 9 of CPC seeking permission to file replica to furnish explanation regarding certain new facts raised by the defendant/petitioner in addition to denial of landlord and tenant relationship as well as recovery of arrears of rent.

6. Heard learned counsel for the parties and perused the record.

7. In the written statement the defendant/petitioner has raised certain new facts which he of course would be under obligation to prove the same during the trial in case he wants to get the benefit of defense pleaded in the written statement, but at the same time the plaintiff/respondent's prayer for filing replica to the new facts pleaded in the written statement cannot be refused.

8. The Kerala High Court in case titled ***Sunil Vasanath Architects and Consulting Engineers vs. Tata Germanies Ltd***. reported in AIR 1999 Ker 88, has been held that replication to written statement sought for clarification of facts stated in written statement can be allowed.

9. The defendant/petitioner has pleaded that plaintiff/respondent is not his landlord as the adjoining shops belonging to the father of the plaintiff/respondent was sold by him and finally was purchased by Shub Kumar in the year 1988 by a sale deed dated 05.01.1988 and after purchasing the shops he had raised construction over it. This claim of the plaintiff/respondent was required to be clarified and replied by the plaintiff/respondent, therefore, the application of the plaintiff/respondent had been allowed to file replica. Permission to file replica does not decide any issue between the parties. The replica to the written statement regarding the facts alleged by the defendant/petitioner are subject to the proof which may be produced during the trial of the case.

10. The power under Article 227 is one of judicial superintendence that cannot be used to upset conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no court could ever have reached them.

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11. An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in administration in larger public interest whereas Article 226 is meant for protection of individual grievances. It has been held by the Supreme Court in ***Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8 SCC 329,*** that "*the power under Article 227 may be unfettered butits exercise is subject to high degree of judicial discipline".* The object of superintendence under Article 227, both administrative and judicial, is to maintain the efficiency, smooth and orderly functioning of the entire machinery of the justice in such a way as it does not bring it into any disrepute. The power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of the justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. The Supreme Court in ***Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar Hydrabad and another v. Ajit Prasad Tarway Manager (Purchase & Store) Hindustan Aeronautics Ltd. Balanagar Hydrabad, AIR 1973 SC 76;*** and ***Kokkanda B. Poondacha & Ors. v. K. D. Ganapathi & another, AIR 2011 SC 1353***, after recapitulating what has been observed in ***Shalini Shyam Shetty's*** case (supra) qua Article 227, held that "*learned Single Judge of the High Court totally ignored the principles and parameters laid down*" by the Supreme Court "*for exercise of power under Articles 226 and 227 of the Constitution qua an interlocutory order passed by the Subordinate Court and set aside the order of the trial Court without assigning any tangible reason*."

12. It is apt to mention here that the power under Article 227 is broader than that conferred on the High Court by Article 226. For example, through its power to issue certiorari under Article 226, a High Court can annul the decision of a tribunal while under Article 227 it can do that and do something—it can issue further directions in the matter. But under Article 227, the High Court does not sit as a Court of appeal inasmuch as it is also not permissible to a High Court on a petition filed under Article 227 to review or reweigh the evidence upon which the inferior Court or tribunal purports to have passed the order or to correct errors of law in the decision. The power of superintendent conferred by Article 227 is supervisory and not appellate jurisdiction.

13. As per settled proposition of law laid down by the Supreme Court in ***The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad*** (supra) ***Mohd. Yunus*** (supra) and ***Kokkanda B. Poondacha*** (supra) that if any order is passed by subordinate court under its vested discretionary jurisdiction, then the same could not be interfered with by the High Court either under revisional jurisdiction under Section 115 of CPC or under supervisory jurisdiction vested under Article 227 of the Constitution of India.

14. The trial Court while passing the order impugned has taken into consideration facts and circumstances of the case and had allowed the application by giving reasons which in no way can be said to be in violation of any provisions of law. The order impugned has been passed by the trial Court and reasons given are that new facts pleaded by the defendant/petitioner were required to be clarified and replied by the plaintiff/respondent, so that the object behind Order 8 Rule 9 is achieved, i.e., to minimize the multiplicity of litigation *inter se* the parties, therefore, no fault can be found with the order impugned. Even otherwise, the order impugned dated 06.08.2022 does not call for any interference while

> exercising the powers under Article 227 of the Constitution of India, because none of the issue between the parties has been decided by allowing the application of the plaintiff/respondent
>
> 15. For the foregoing reasons, I do not find any illegality and perversity in the impugned judgment dated 06.08.2022 and the same requires no interference by this Court. The petition is, accordingly, ***dismissed***."

10. In explicit terms it has been engraved in the judgement by this Court that in written statement, defendant/petitioner raised certain new facts which he of course would be under obligation to prove during trial if he wanted to get the benefit of defence pleaded in written statement, but at the same time plaintiff/respondent's prayer to file Replica to new facts pleaded in written statement could not be refused. Reference in this regard was also made to a judgement of the Kerala High Court in a case titled as ***Sunil Vasanath Architects and Consulting Engineers vs. Tata Germanies Ltd. AIR 1999 Ker 88***. As a sequence whereof, this Court also observed that defendant/petitioner had pleaded that plaintiff/ respondent was not his landlord as the adjoining shops belonging to father of plaintiff/respondent were sold by him and finally was purchased by Shub Kumar in the year 1988 by a sale deed dated 05.01.1988 and that after purchasing shops, he had raised construction over it. This claim of the plaintiff/respondent was required to be clarified and replied by the plaintiff/respondent, therefore, the application of the plaintiff/respondent had been allowed to file Replica. Permission to file replica did not decide any issue between the parties. The Replica to the written statement regarding the facts alleged by the defendant/petitioner were subject to the proof which might be produced during the trial of the case.

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While passing the judgement, it was also observed by this Court that the Trial Court passed order impugned after taking into consideration facts and circumstances of the case and allowed the application by giving reasons which in no way could be said to be in violation of any provisions of law inasmuch as Trial Court order has been passed based on reasons given therein more particularly when new facts pleaded by defendant/petitioner were required to be clarified and replied by plaintiff/respondent, so that object behind Order VIII Rule 9 CPC was achieved, i.e., to minimize the multiplicity of litigation *inter se* the parties, therefore, no fault was held to be found with the Trial Court order.

11. The plea of learned counsel for petitioner qua Article 227 of the Constitution has also been taken care of by this Court in judgement dated 16th December 2023. This Court observed and said therein that the power under Article 227 is one of judicial superintendence which could not be used to upset conclusions of facts, howsoever erroneous those may be, unless such conclusions were so perverse or so unreasonable that no court could ever have reached them. An improper and a frequent exercise of this power would be counterproductive and would divest this extraordinary power of its strength and vitality. The power under Article 227, it was said, was discretionary and had to be exercised very sparingly on equitable principle. This reserve and exceptional power of judicial intervention was not to be exercised just for grant of relief in individual cases but ought to be directed for promotion of public confidence in administration in larger public interest. Reference was also made to the Supreme Court judgement in

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Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8 SCC 329, in which it was held "*the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline".* The object of superintendence under Article 227, both administrative and judicial, is to maintain the efficiency, smooth and orderly functioning of the entire machinery of the justice in such a way as it does not bring it into any disrepute. The power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of the justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. This Court went further to say that the power under Article 227 was broader than that conferred on the High Court by Article 226. For example, through its power to issue certiorari under Article 226, a High Court could annul the decision of a tribunal while under Article 227 it could do that and do something—it can issue further directions in the matter. But under Article 227, the High Court does not sit as a Court of appeal inasmuch as it is also not permissible to a High Court on a petition filed under Article 227 to review or reweigh the evidence upon which the inferior Court or tribunal purports to have passed the order or to correct errors of law in the decision. The power of superintendence conferred by Article 227 is supervisory and not appellate jurisdiction.

In that view of matter this Court has dealt with all facets of the matter in its entirety.

12. The Supreme Court in ***Haridas Das v. Usha Rani Banik (Smt.) and Others, (2006) 4 SCC 78***, while considering the scope and ambit of

Section 114 CPC read with Order 47 Rule 1 CPC observed and held as under:

> "14. In *Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170* it was held that:
>
> "8. It is well settled that the 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 connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in *AribamTuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389* speaking through Chinnappa Reddy, J. has made the following pertinent observations:
>
> 'It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the 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. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.'
>
> 15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason."

13. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. An error that 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 under Order XLVII Rule 1 CPC. In exercise of jurisdiction under Order XLVII 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'. [Vide: ***Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, AIR 1979 SC 1047***; ***Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137***, and ***Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715***].

14. Again, the Supreme Court in ***Lily Thomas v. Union of India, (2000) 6 SC 224***, held that power of review could be exercised to correct a mistake but not to substitute a view. Such powers could be exercised within limits of statute dealing with exercise of power. It was further observed that the words "any other sufficient reason" appearing in Order XLVII Rule 1 CPC must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in ***Chhajju Ram v. Neki, AIR 1922 PC 112*** and ***Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius, AIR 1954 SC 526***.

15. Section 114, CPC, provides for a substantive power of review by a civil court and consequently by appellate courts. Section 114 envisions:

> "114. Review. —Subject as aforesaid, any person considering himself aggrieved, —
> (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,
> (b) by a decree or order from which no appeal is allowed by this Code,
> (c) by a decision on a reference from a Court of Small cause,
> may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."

16. The words "subject as aforesaid" occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the

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procedural conditions contained in Order XLVII of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order XLVII Rule 1 CPC.

17. Power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. It cannot be denied that the review is the creation of a statute. In the case of ***Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844***, the Supreme Court has held that power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel for review petitioner was unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated. The term "*mistake or error apparent*" by its very implication indicates an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of facts or legal position. If an error is not obvious and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the

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record for the purpose of Order 47 Rule 1 CPC. To put it differently, 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 on a point of fact or law. In any case, while exercising the power of review, the court cannot sit in appeal over its judgment/ decision.

18. The Supreme Court in ***Ram Sahu (Dead) through LRs and others v. Vinod Kumar Rawat and others, 2020 SCC OnLine SC 896***, after discussing a number of judgements on the theme of review, has held that 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 XLVII Rule 1 CPC itself. The power of review cannot be exercised as an inherent power nor can an appellate power be exercised in the guise of power of review. After holding this, the Supreme court found that High Court overstepped jurisdiction vested in the Court under Order XLVII Rule 1 CPC.

19. Again, the Supreme Court in ***S. Murali Sundaram v. Jothibai Kannan, (2023) SCC OnLine SC 185***, relied upon ***Perry Kansagra v. Smriti Madan Kansagra, (2019) 20 SCC 753***, to state that while exercising review jurisdiction, the Review Court does not sit in an appeal over its own order. It was observed that a rehearing of the matter was impermissible in law and the same cannot be considered as an appeal in disguise. It was further clarified that the power of review can be exercised for correction of a mistake but not to substitute a view, thus, the same was wholly unjustified to rewrite a judgement by which the controversy had already been decided. The Supreme Court stated

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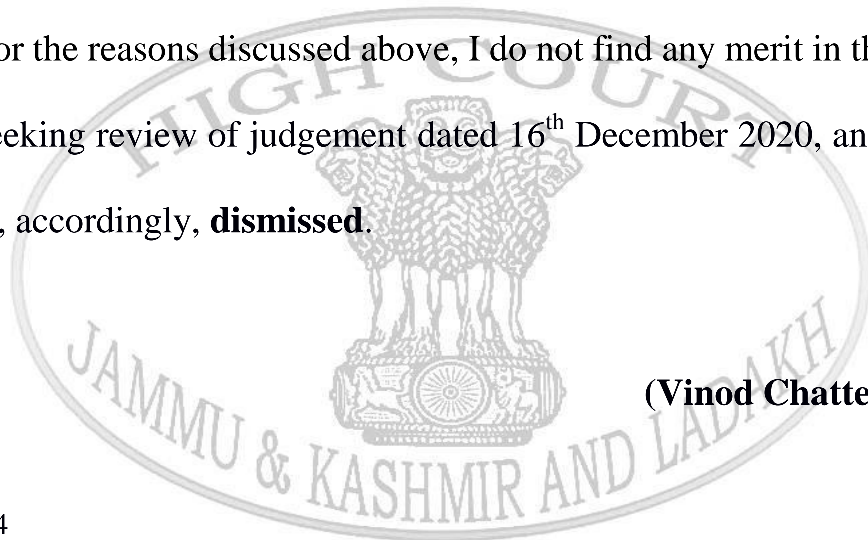
that the Madras High Court had exceeded its review jurisdiction while deciding the review application which is wholly impermissible.

20. In the backdrop of above well-settled legal position, all that has been argued by counsel for applicant/review petitioner and/or mentioned in the instant review petition, is that this Court should reopen the findings recorded in the judgement, review of which is sought. It is made clear here that review jurisdiction cannot be used for that purpose. This is not the scope of Section 114 read with Order XLVII Rule 1 CPC. After having an overall view of the grounds taken in the application and submissions made by learned counsel for review petitioner, there is no error apparent on the face of record warranting review of the judgement dated 16th December 2023. In such circumstances, the instant review petition is liable to be dismissed.

21. For the reasons discussed above, I do not find any merit in this petition seeking review of judgement dated 16th December 2020, and the same is, accordingly, **dismissed**.



(Vinod Chatterji Koul)
Judge

<u>Jammu</u>
19.11.2024
Ajaz Ahmad, Secy.

Whether approved for reporting? Yes