

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

RP No. 61/2024 in CM(M) No. 208/2021
CM No. 6085/2024

Reserved on: 16.10.2024

Pronounced on: 07.11.2024

State (Now UT) of J&K and Ors.

...Petitioner(s)

Through: Mr. Ilyas Nazir Laway, GA.

Vs.

Abid Hussain

...Respondent(s)

Through: Mr. Sheikh Faisal, Advocate.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

JUDGEMENT

1. In the instant review petition, petitioners herein seek review of judgment/order dated 18th of October 2023, (for short the judgement/order under review) passed in CM(M) No. 208/2021, titled as "*Dr. Abid Hussain v. UT of J&K and Ors.*".
2. It is pertinent to note here that this court in CM(M) No. 208/2021, supra has dealt with the challenge thrown by the decree holder respondent herein to order dated 27th of August 2021, passed under Section XLVII CPC by Sub-Judge/Chief Judicial Magistrate, Srinagar (for short the executing court) in terms whereof the said court dismissed the execution petition filed by the decree holder respondent herein for execution of decree and judgment dated 16th October 2008, filed by the decree holder respondent herein having earned by him against the judgement debtors petitioners herein.
3. This court after hearing counsel for the parties and upon perusal of the material available on record allowed the CM(M) No. 208/2021 and consequently set-aside the order dated 27th of August 2021, supra directing the executing court to proceed ahead with the execution petition from the stage it had reached prior to the filing of the aforesaid application under Section 47 CPC.
4. The judgment debtors petitioners herein have filed the instant review petition primarily on the ground that since the decree holder

respondent herein has attained the age of superannuation and is, as on date, 65 years old, the decree supra is not executable and this court, while deciding the CM(M) No. 208/2021, did not consider this aspect of the matter and, as such, the judgement/order under review is contrary to law in the facts and circumstances of the case, thus, liable to be reviewed.

5. It would be appropriate to mention here that power to review its judgments by High Court is derived from Article 215 of the Constitution of India, which provides that every High Court shall be a court of record, and as such, the High Court has inherent power to correct its records, and has an obligation, rather duty, to maintain correct records within its jurisdiction in accordance with law.

Further the power to correct judgments/orders, including where there is an error apparent on the face of the record, falls within the powers of the High Court as a court of record, however, this power is subject to the provisions of law made by the legislature, and/or the Rules framed under Article 215 of the Constitution of India.

It is also pertinent to mention here that the High Court, in exercise of power of review conferred under Article 215 of the Constitution, has framed J&K High Court Rules, 1999 (for short the Rules of 1999) wherein Rules 65 and 66(4), contained in Chapter VII of the said Rules deals with the provisions of review. For the sake of brevity and convenience, Rules 65 and 66(4) being relevant herein are reproduced here under: -

65. Application for review of Judgement.- The Court may review its judgement or order but no application for review shall be entertained except on the ground mentioned in order XLVII Rule I of the Code.

66(4) The application for review shall be disposed of by the Court in accordance with the provisions of Order XLVII of the Code.

As appears from above in terms of the aforesaid Rules, the power of review of this court is restricted to the grounds enumerated in Order XLVII 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 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 applied for the review.

Thus, what emanates from Order XLVII CPC supra is that an application for review would lie inter-alia on the ground that order suffers from an error apparent on the face of the record and permitting such error to continue would lead to failure of justice.

It is also significant to note here that the power of review can also be exercised by the court in the event of discovery of new and important matters or evidence which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him when the order was made.

6. Further, an application for review would also lie if the order has been passed on account of some mistake besides for any other “sufficient reason”.
7. Before proceeding further it would be and advantageous to refer to the following judgements of the Apex Court being relevant herein: -

The Apex Court in case titled as “**Parsion Devi and Ors. Vs. Sumitri Devi and Ors**”, reported in **1997 (8) SCC 715** has made following pivotal observations at para 9 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.”

The Apex court in case titled as **“Lily Thomas and Ors. V. Union of India and Ors.**, reported in **2000 (6) SCC 224** at para 56 has held as under: -

56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise.....

In case titled as **“Inderchand Jain (Dead) through LRs V. Motilal (Dead) through LRs”**, reported in **2009 (14) SCC 663** the Apex Court has held at pars 9 and 10 as under: -

9. 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. Furthermore, an application for review shall also lie for any other sufficient reason.

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing 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.

The Apex Court in case titled as **“Shri Ram Sahu (dead) through LRs and Ors. Vs. Vinod Kumar Rawat”** reported in **2020 Online SC 896** at para 15 has held as under: -

15. The sum and substance of the aforesaid discussion is that the High Court has committed a grave error in allowing the review application and deleting the observations made in para 20 of its order dated 10.12.2013 passed in Shri Ram Sahu V. Vinod Kumar Rawat in exercise of powers under sections 114 read with Order 47 Rule 1 CPC under the circumstances the impugned order is unsustainable and deserves to be quashed and set aside.

The Apex Court in the recent Constitution Bench judgement passed in case titled as **“Beghar Foundation and Another Vs. Justice K. S. Puttaswamy and Ors”**., reported in **2021 (3) SCC 1**, has held that even the change in law or subsequent decision /judgement of the co-ordinate Bench or larger bench by itself cannot be regarded as a ground for review.

8. Keeping in mind the aforesaid position of law and reverting back to the case in hand, the moot question for consideration of this court is as to whether the judgement debtors petitioners herein in the instant petition have been able to carve out a case for reviewing of judgement/order under review.
9. As emanates from the available record, admittedly the decree holder respondent herein filed a suit against the order of termination of his services ordered by the judgement debtors petitioners herein which suit came to be decreed in his favour by the trial court in terms of the judgement and decree dated 16th October 2008 setting aside the said order of termination while directing the judgement debtors petitioners herein to treat him in service and allow him all consequential benefits and indisputably the judgement debtors petitioners herein did not challenge the said judgement and decree and instead before the executing court sought time to implement the judgement and decree and in fact undertook to do the same within a time frame thus, under the said circumstances rendered the judgement debtors petitioners herein bound to execute and implement the said judgement and decree. The alleged difficulty claimed to be faced by the judgement debtors petitioners herein in executing and implementing the judgement and decree dated 16th October 2008 is in fact their own creation and, as such, cannot at this stage either put blame on this court or else deprive the decree holder respondent herein of the benefits of the said judgement and decree.
10. It is significant to note here that more than 16 years have passed since passing of the judgement and decree supra and the decree holder respondent herein is yet to reap the benefits of the same and had the judgement debtors petitioners herein executed the judgement and decree at the relevant point of time, situation which is being now raised in the instant review petition would not have arisen.
11. Thus, in view of the aforesaid position obtaining in the matter, it is manifest that the judgement debtors petitioners herein do not carve

out a case for review of the judgement /order under review on the grounds enumerated in Order XLVII CPC supra.

12. What is also manifest from the record available on the file that the judgement debtors petitioners herein seemingly have filed the instant review petition only to delay the execution and implementation of the judgement and decree dated 16th October 2008 as the record of the instant review petition in general and the application for condonation of delay in particular accompanying the same reveal that after the pronouncement of the judgement/order under review, the judgement debtors petitioners herein had approached their counsel for filing of a Special Leave Petition in the Hon'ble Apex Court who is stated to have returned back the same with the opinion that there is no ground for filing a Special Leave Petition and advised instead the filing of review petition. In this view of the matter as well once the judgement debtors petitioners herein accepted the opinion of their counsel that there is no ground for filing a Special Leave Petition, the same further diminished the scope of filing of a review. Thus in this view of the matter therefore as well it can safely be said that there could hardly be any justification in filing the instant review petition other than delaying the execution of the judgement and decree dated 16th October 2008 by the judgement debtors petitioners herein.

13. For what has been observed, considered and analyzed hereinabove inasmuch as having regard to the facts and circumstances of the case coupled with the legal position enunciated in the judgements supra by the Apex Court this court is of the considered opinion that the grounds urged in the instant review petition do not warrant review of the judgement and decree dated 18th October 2023.

14. Resultantly, the instant review petition fails and is accordingly **dismissed.**

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

07.11.2024

Ishaq

Whether the order is speaking? Yes
Whether approved for reporting ? Yes