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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Review Petition No. 11 of 2024
Reserved on: 28.3.2024
Date of Decision: 24.4.2025

Subhash Chand Mehendra (since deceased) through his LRs

...Petitioners

Versus

State of H.P. and another ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***Yes.***

For the petitioners : Mr. R.K. Bawa, Senior Advocate, with Mr. Ajay Kumar Sharma, Advocate,

For the Respondents/State : Mr. Lokender Kutlehria, Additional Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking review of the judgment dated 4.11.2023, passed by this Court in RSA No. 323 of 2022, titled Subhash Chander Mahendra (deceased through LRs) Vs. State of Himachal Pradesh. It has been asserted that this Court concluded that petitioners/ appellants were seeking a decree of declaration based on the

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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revenue record, which cannot be granted. Reliance was placed upon the judgment of the Hon'ble Supreme Court in ***State of H.P. Vs. Keshav Ram 1996 (2) SCC 1957***. This Court ignored the pleadings of the parties. The petitioners gave the details of the suit land and asserted that they had purchased the land in 1973-74. This fact was not specifically denied in the written statement, and the contents of para No. 1 were partly admitted. The admitted facts need not be proved as per Section 58 of the Indian Evidence Act, and there is an error in the findings recorded by this Court. There was no dispute of title between the parties as the State of H.P. never set up the title regarding the suit land. The declaration could have been granted by the Court because of undisputed and unrebutted revenue entries. The evidence of defendant No.1 was closed by the order of the Court on 16.1.2014, and the defence taken by the defendant in the written statement was not proved. The petitioners had proved their case by presenting satisfactory evidence. This Court ignored the fact that no evidence was led by the defendants. The petitioners averred in para-1 that the settlement operation in Mauja Shainal, Pargna Gothangi, Tehsil and District Shimla was completed and a final certificate was prepared. Defendant No.1 or any other person had no right to

carry out a correction in the revenue record. The Settlement Officer had no jurisdiction to pass an order. The record does not suggest that the proceedings under Section 163 of the HP Land Revenue Act were ever initiated against the petitioners. The Settlement Officer had also ordered a change in the classification of the land. The change in classification was without any basis and violated the principles of natural justice. The land holding of the plaintiffs was decreased from 17 biswas to 12 biswas, and the land holding of the State was increased. The plaintiffs had not made any encroachment upon the Government land. The First Appellate Court held that the suit was barred by *res judicata*. This Court held that the suit was not barred by *res judicata*. The matter was required to be remitted to the First Appellate Court to enable it to return findings on merits. The law propounded by the Hon'ble Supreme Court in ***Santosh Hazari Vs. Purshotam Hazari 2001 (3) SCC 179*** was not properly appreciated. It was wrongly held that the injunction cannot be granted to the petitioners against the true owner. The Court relied upon the case law not cited by the parties. Therefore, it was prayed that the present petition be allowed and the judgment passed by this Court be reviewed.

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2. The petition is opposed by a filing reply by respondent No.1, making a preliminary submission regarding the lack of maintainability. The contents of the petition were denied on merits except those regarding the judgment delivered by this Court. It was asserted that there is no error apparent on the face of the record. Review petition cannot be an appeal in disguise, and the party cannot be permitted to argue the matter which was addressed and answered by the Court. The power of review does not extend to the re-examination of the evidence or reappreciation of facts which were originally considered. It was rightly held that the declaration cannot be granted based on the revenue record. Manish Mahindra (PW3) stated that the suit land was purchased by his father in the year 1973-74, but the sale deed was not produced before the Court to show the extent of the land purchased by him. There was a passage over Khasra Nos. 23 and 24, which was obstructed by the plaintiff. Settlement Officer reviewed the matter and found that Khasra Nos. 27, 29, 30 and 32 were prepared from Khasra Nos. 28 and 29 min which were in the ownership and possession of the State. The plaintiffs failed to prove their case. The Settlement Collector had made a proper inquiry after visiting the spot in the presence of the parties. This

order was upheld by the Commissioner, and the Revision was dismissed by the learned Financial Commissioner. This Court had rightly rejected the plea taken by the petitioners that the Settlement Officer had no jurisdiction to pass the order. The Court had rightly held that the plea of *res judicata* does not apply to the present case. Revenue authorities never determined the title of the petitioner. Therefore, it was prayed that the present petition be dismissed.

3. A rejoinder denying the contents of the reply and affirming those of the petition was filed.

4. I have heard Mr. R.K. Bawa, learned Senior Counsel, assisted by Mr. Ajay Kumar Sharma, learned counsel for the petitioners and Mr. Lokender Kutlehria, learned Additional Advocate General for the respondent-State.

5. Mr. R.K. Bawa, learned Senior Counsel for the petitioners/plaintiffs, submitted that this Court erred in holding that the petitioners/plaintiffs were required to prove the sale deed to seek the declaration. The title was never in dispute. The settlement authorities had no jurisdiction. The learned Appellate Court had not given any finding on merit, and once the conclusion of the learned Appellate Court that the suit was barred

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by *res judicata* was set aside, the matter was required to be remanded to the learned Appellate Court for giving a fresh finding on merits. Therefore, he prayed that the present petition be allowed and the judgment passed by this Court be reviewed.

6. Mr. Lokender Kutlehria, learned Additional Advocate General, for the respondent-State, submitted that there is no error apparent on the face of the record. All the pleas taken by the petitioners/plaintiffs were adjudicated by this Court, and if they are aggrieved by the findings of the Court, their remedy lies in filing an appeal and not in filing a review petition. A review cannot be an appeal in disguise. Therefore, he prayed that the present petition be dismissed.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. The scope of the review was explained by the Hon'ble Supreme Court in ***State (NCT of Delhi) v. K.L. Rathi Steels Ltd., (2024) 7 SCC 315: 2024 SCC OnLine SC 1090,*** and it was observed at page 342:

> **37.** Read in conjunction with Section 114CPC, Order 47 Rule 1 thereof has three broad components which need to be satisfied to set the ball for a review in motion — (*i*) "who" means the person applying must demonstrate that he is a

person aggrieved; (*ii*) "when", means the circumstances a review could be sought; and (*iii*) "why", means the grounds on which a review of the order/decree ought to be made. Finally comes the "what", meaning thereby the order the court may make if it thinks fit. Not much attention is generally required to be paid to components (*i*) and (*ii*) because of the overarching difficulties posed by component (*iii*). However, in deciding this reference, component (*i*) would also have a significant role apart from the Explanation inserted by way of an amendment of CPC.

38. Let us now briefly attempt a deeper analysis of the provision. We are conscious that the provisions relating to review have been considered in a catena of decisions, but the special features of these RPs, coupled with the fact that two Hon'ble Judges of this Court have delivered a split verdict, make it imperative for us not to miss any significant aspect.

39. A peep into the legislative history would reveal that Rule 1 of Order 47CPC, which is part of the First Schedule appended thereto, bears a very close resemblance to its predecessor statutes, i.e. Section 623 of the Codes of Civil Procedure of 1877 and 1882. The solitary legislative change brought about in 1976 in Order 47CPC resulted in the insertion of an Explanation at the foot of Rule 1, which is at the heart of the controversy here.

40. The first and foremost condition that is required to be satisfied by a party to invoke the review jurisdiction of the court, whose order or decree, as the case may be, is sought to be reviewed, is that the said party must be someone who is aggrieved by the order/decree.

41. The words "person aggrieved" are found in several statutes; however, the meaning thereof has to be ascertained about the purpose and provisions of the statute. In one sense, the said words could correspond to the requirement of "locus standi" about judicial remedies. The need to ascertain the "locus standi" of a review petitioner could arise if he is not a party to the proceedings

but claims the order or decree to have adversely affected his interest. In terms of Order XLVII of the 2013 Rules read with Order 47CPC, a petition for review at the instance of a third party to the proceedings too is maintainable, the quintessence being that he must be aggrieved by a judgment/order passed by this Court. This is what has been held in ***Union of India v. Nareshkumar Badrikumar Jagad [Union of India v. Nareshkumar Badrikumar Jagad, (2019) 18 SCC 586]***. That is, of course, not the case here. Normally, in the context of Rule 1 of Order 47CPC, it is that person (being a party to the proceedings) suffering an adverse order and/or decree who, feeling aggrieved thereby, usually seeks a review of the order/decree on any of the grounds outlined therein. The circumstances where a review would lie are spelt out in clauses (*a*) to (*c*).

42. Order 47 does not end with the circumstances as Section 114CPC, the substantive provision, does. Review power under Section 114 read with Order 47CPC is available to be exercised, subject to fulfilment of the above conditions, on setting up by the review petitioner any of the following grounds:

(*i*) discovery of new and important matter or evidence; or

(*ii*) mistake or error apparent on the face of the record; or

(*iii*) any other sufficient reason.

43. Insofar as (*i*) (supra) is concerned, the review petitioner has to show that such evidence (*a*) was available on the date the court made the order/decree, (*b*) with reasonable care and diligence, it could not be brought by him before the court at the time of the order/decree, (*c*) it was relevant and material for a decision, and (*d*) because of its absence, a miscarriage of justice has been caused in the sense that had it been produced and considered by the court, the ultimate decision would have been otherwise.

44. Regarding (*ii*) (supra), the review petitioner has to satisfy the court that the mistake or error committed by it

is self-evident and such mistake or error can be pointed out without any long-drawn process of reasoning, and, if such mistake or error is not corrected and is permitted to stand, the same will lead to a failure of justice. There cannot be a fit-in-all definition of "mistake or error apparent on the face of the record", and it has been considered prudent by the courts to determine whether any mistake or error does exist, considering the facts of each case coming before it.

45. With regard to (*iii*) (supra), we can do no better than refer to the traditional view in ***Chhajju Ram [Chhajju Ram v. Neki, 1922 SCC OnLine PC 11: AIR 1922 PC 112]***, a decision of a Bench of seven Law Lords of the Judicial Committee of the Privy Council. It was held there that the words "any other sufficient reason" means "a reason sufficient on grounds at least analogous to those specified immediately previously", meaning thereby (*i*) and (*ii*) (supra). Notably, ***Chhajju Ram [Chhajju Ram v. Neki, 1922 SCC OnLine PC 11: AIR 1922 PC 112]*** has been consistently followed by this Court in a number of decisions starting with ***Moran Mar Basselios Catholicos v. Mar Poulose Athanasius [Moran Mar Basselios Catholicos v. Mar Poulose Athanasius, (1954) 2 SCC 42: AIR 1954 SC 526]***.

46. There are recent decisions of this Court which have viewed "mistake" as an independent ground to seek a review. Whether or not such decisions express the correct view need not detain us since the review here is basically prayed in view of the subsequent event.

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J. *Other precedents on review*

59. Precedents on the aspect of review are legion, and we do not wish to burden this judgment by tracing all the decisions. However, only a few that were considered in the split verdict, some of which were cited by the parties before us and some that have emerged from our research on the subject and are considered relevant, are discussed/referred to here.

60. Two of these decisions, viz. ***A.C. Estates v. Serajuddin & Co. [A.C. Estates v. Serajuddin & Co., 1965 SCC OnLine SC 295 : (1966) 1 SCR 235: AIR 1966 SC 935]*** and ***Shatrunji v. Mohd. Azmat Azim Khan [Shatrunji v. Mohd. Azmat Azim Khan, (1971) 2 SCC 200]*** were rendered prior to the introduction of the Explanation in Rule 1 of Order 47CPC. Significantly, even without the Explanation, substantially the same view was expressed.

61. In ***A.C. Estates [A.C. Estates v. Serajuddin & Co., 1965 SCC OnLine SC 295 : (1966) 1 SCR 235: AIR 1966 SC 935]***, a Bench of three Hon'ble Judges of this Court, while dismissing the civil appeal and upholding the order of the High Court of Calcutta, held as follows : (SCC OnLine SC para 16)

> "*16.* ... Our attention in this connection is drawn to Section 29(5) of the Act, which gives power to the Controller to review his orders and the conditions laid down under Order 47 of the Code of Civil Procedure. But this cannot be a case of review *on the ground of discovery of new and important matter, for such matter has to be something which exists at the date of the order and there can be no review of an order which was right when made on the ground of the happening of some subsequent event* (see ***Kotagiri Venkata Subbamma Rao v. Vellanki Venkatrama Rao [Kotagiri Venkata Subbamma Rao v. Vellanki Venkatrama Rao, 1900 SCC OnLine PC 12 : (1899-1900) 27 IA 197])***." (emphasis supplied)

62. The next is the decision of a Bench of two Hon'ble Judges of this Court in ***Shatrunji [Shatrunji v. Mohd. Azmat Azim Khan, (1971) 2 SCC 200]*** . While dismissing an appeal and upholding the order ***[Mohd. Azamat Azim Khan v. Shatrunji, 1963 SCC OnLine All 50]*** of the Allahabad High Court, reference was made to "any other sufficient reason" in Rule 1 of Order 47CPC and the decision in ***Kotagiri Venkata Subbamma Rao [Kotagiri Venkata Subbamma Rao v. Vellanki Venkatrama Rao, 1900 SCC OnLine PC 12 : (1899-1900) 27 IA 197]*** whereupon it was held : ***(Shatrunji case [Shatrunji v. Mohd. Azmat Azim Khan, (1971) 2 SCC 200]***, SCC pp. 203-204, para 13)

> "*13.* ... the principles of review are defined by the Code, and the words "any other sufficient reason" in Order 47 of the Code would mean a reason sufficient on grounds analogous to those specified immediately previously in that order. The grounds for review are the discovery of new matters 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 the review is asked for on account of some mistake or error apparent on the face of the record. In ***Kotagiri Venkata Subbamma Rao v. Vellanki Venkatrama Rao [Kotagiri Venkata Subbamma Rao v. Vellanki Venkatrama Rao, 1900 SCC OnLine PC 12 : (1899-1900) 27 IA 197]*** Lord Davey at IA p. 205 of the Report said that '*the section does not authorise the review of a decree which was right when it was made on the ground of the happening of some subsequent event*'." (emphasis supplied)

63. What was laid down in ***Netaji Cricket Club [BCCI v. Netaji Cricket Club, (2005) 4 SCC 741]***, upon reading Order 47CPC, can be better understood in the words of the Hon'ble Judge authoring the judgment. The relevant passages are quoted hereunder : (SCC pp. 764-65, paras 88-90)

> "*88.* ... Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code, in terms whereof it is empowered to make such order as it thinks fit.
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> *89.* Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record, but also if the same is necessitated on account of some mistake or for any other sufficient reason.

> *90.* Thus, a mistake on the part of the court, which would include a mistake in the nature of the undertaking, may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*"."

In the next paragraph, their Lordships quoted a portion of para 35 from the larger Bench decision in ***Moran Mar Basselios Catholicos [Moran Mar Basselios Catholicos v. Mar Poulose Athanasius, (1954) 2 SCC 42: AIR 1954 SC 526]*** but held that "the said rule is not universal".

64. ***Netaji Cricket Club [BCCI v. Netaji Cricket Club, (2005) 4 SCC 741]*** was followed in ***Jagmohan Singh v. State of Punjab [Jagmohan Singh v. State of Punjab, (2008) 7 SCC 38]***. It was held there that Rule 1 of Order 47CPC does not preclude the High Court or a court from taking into consideration any subsequent event, and that if imparting justice in a given situation is the goal of the judiciary, the court may take into consideration (of course on rare occasions) the subsequent events.

65. This Court, in para 20 of the decision in ***Kamlesh Verma v. Mayawati [Kamlesh Verma v. Mayawati, (2013) 8 SCC 320 : (2013) 3 SCC (Civ) 782 : (2013) 4 SCC (Cri) 265 : (2014) 1 SCC (L&S) 96]***, after surveying previous authorities and following ***Chhajju Ram [Chhajju Ram v. Neki, 1922 SCC OnLine PC 11: AIR 1922 PC 112]*** and ***Moran Mar Basselios Catholicos [Moran Mar Basselios Catholicos v. Mar Poulose Athanasius, (1954) 2 SCC 42: AIR 1954 SC 526]*** summarised the principles of review and illustrated when a review would be and would not be maintainable. Despite the observation in ***Netaji Cricket Club [BCCI v. Netaji Cricket Club, (2005) 4 SCC 741]***

> limiting ***Moran Mar Basselios Catholicos [Moran Mar Basselios Catholicos v. Mar Poulose Athanasius, (1954) 2 SCC 42: AIR 1954 SC 526], Kamlesh Verma [State (NCT of Delhi) v. Kartar Singh, 2016 SCC OnLine SC 1525]*** thought it fit to agree with the latter decision.
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> **66.** Recently, in ***S. Madhusudhan Reddy v. V. Narayana Reddy [S. Madhusudhan Reddy v. V. Narayana Reddy, (2022) 17 SCC 255: 2022 SCC OnLine SC 1034]***, a Bench of three Hon'ble Judges has accepted the meaning of the ground "for any other sufficient reason" as explained in ***Chhajju Ram [Chhajju Ram v. Neki, 1922 SCC OnLine PC 11: AIR 1922 PC 112], Moran Mar Basselios Catholicos [Moran Mar Basselios Catholicos v. Mar Poulose Athanasius, (1954) 2 SCC 42: AIR 1954 SC 526]*** and ***Kamlesh Verma [State (NCT of Delhi) v. Kartar Singh, 2016 SCC OnLine SC 1525]***.

9. A perusal of the judgment passed by the learned Appellate Court shows that the learned Appellate Court had recorded the findings in paras 13 to 16 on the merits of the dispute by holding that there was no evidence to show that an opportunity of hearing was not granted to the plaintiffs, plaintiffs were found to be in possession of the land belonging to the State, proceedings for correction were carried out, the plaintiffs were aware of the proceedings, they had participated in the proceedings, and the collector was fully competent to remove the encroachment on the Government land. It was held that the judgment of the learned Trial Court was consistent with these findings. It was held in paragraphs 17 to 20 of the judgment that the suit was barred by the principle of *res judicata*. This Court

reversed the findings regarding the suit being barred by *res judicata*. This Court also held that the learned First Appellate Court had affirmed the judgment and decree of the learned Trial Court, and a general agreement with the findings of the learned Trial Court was sufficient. Reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Santosh Hazare Vs. Purshotam Tiwari 2001 (3) SCC 179***. Thus, the plea taken by the petitioners/plaintiffs in the review petition is not correct that no finding was recorded by the learned Appellate Court, and this Court should have remanded the matter to the learned Appellate Court to record fresh findings on the merits. The learned Appellate Court had upheld the findings of the learned Trial Court on merit, and this Court had indicated its reasons for upholding the findings of learned Appellate Court. It was rightly submitted on behalf of the respondent-defendant that review cannot be an appeal in disguise, and if the plaintiffs are aggrieved by the reasoning of this Court, their remedy lies elsewhere and not in the review.

10. It was submitted that the title of the plaintiffs was never in dispute, as the plea regarding the ownership contained in paragraph 1 of the plaint was not specifically denied. It was

submitted that an admitted fact needs not be proved and the Court should have granted the decree of declaration based on the admission. This submission is not acceptable. It was laid down by the Kerala High Court in ***Mani v. Madhavi, 2017 SCC OnLine Ker 41820*** that the admission does not confer a title upon a person. It was observed:

> **27.** We shall the examine merit of the contention regarding admission first. Principle that an admission by itself cannot confer title to a property is well settled. S. 17 of the Evidence Act defines "admission" and S. 18 of the said Act deals with admission by party to proceeding or his agent. S. 21 of the Evidence Act speaks about proof of admissions against persons making them, and by or on their behalf. S. 58 of the Evidence Act says that an admitted fact need not be proved. Although an admission is the best piece of evidence against the person making it, he can rebut the same. It is fundamental that admissions can be explained and proved to be erroneous.
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> **28.** Supreme Court in ***Ambika Prasad Thakur v. Ram Ekbal Rai; (AIR 1966 SC 605)*** has considered *inter alia* the effect of admission by a party in respect of title. It is held that title cannot pass by a mere admission. Principle that an admission by itself cannot confer title to property has been laid down by this Court also.
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> **29.** In view of the above principles, we are of the opinion that merely because DW 1 had admitted that his mother enjoyed the property for and on behalf of the plaintiffs as well, it will not create any title on the plaintiffs or their successors-in-interest, if they actually had none.

11. Therefore, no decree could have been granted to the plaintiffs based on the admissions.

12. It was submitted that the defendant did not lead the evidence, and the suit should have been decreed. This submission is only stated to be rejected. The plaintiff has to stand on his legs, and he cannot take advantage of the weakness of the defendant's case. The plaintiff had to prove his title to get the declaration and no declaration can be granted to him on failure to lead evidence by the defendant.

13. It was submitted that this Court wrongly held that an injunction cannot be issued against the true owner because the title never vested with the State of H.P. This submission is not correct. It was held in para 29 of the judgment that the plaintiff was held to be an encroacher on the Government land, and the revenue authority had the jurisdiction to take action against him for removal of the encroachment. He could not seek any injunction against the true owner because the encroacher cannot seek an injunction against the true owner.

14. It was submitted that the judgments not cited at the bar were applied by this Court. It is unfortunate that this submission has been made by a counsel who had not argued the matter originally before the Court and does not contain any affidavit of the learned counsel who had originally argued the

matter. Hence, the subsequent counsel is not in a position to say whether the judgment was cited at the bar or not. It was laid down by the Allahabad High Court in ***Jag Mohan Agarwal v. Kanchan Kumari Jain, 2023 SCC OnLine All 3965*** that the review at the instance of the subsequent counsel is not maintainable. It was observed:

> **9.** Learned counsel for applicant has placed reliance upon the judgment of this Court in the matter of ***Sharda Prasad Mishra v. State of U.P. (Writ-A No. 60191 of 2006) decided on 10.10.2013***. From the perusal of the said judgment, it is apparently clear that it is not in favour of applicant rather against him. The only fact which is pointed out by learned counsel for applicant is about "No Objection Certificate". In the present case, there is no "No Objection Certificate" in favour of applicant from earlier counsel. Even otherwise, mere obtaining of "No Objection Certificate" is not suffice for filing of review application by a subsequent counsel. Relevant parts of the said judgment is quoted below:—
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> > "When the case was initially heard one Sri. S.K. Singh had appeared for the respondent nos. 2 to 7. This review application has been filed by the learned counsel, who was not the counsel for the respondent when the judgment was passed.
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> > The Supreme Court in the case of ***Tamil Nadu Electricity Board v. N. Raju Reddiear, (1997) 9 SCC 736 : AIR 1997 SC 1005*** has held that review petition cannot be entertained at the behest of a counsel or a person, who had not appeared before the Court or was not party in the main case. Para-1 of the judgment reads as under:
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> > > "1. It is a sad spectacle that a new practice unbecoming and not worthy of or conducive to the profession is cropping up. Mr. Mariaputham,

> Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr. V Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on 24-4-1996. Yet another advocate, Mr. S.U.K. Sagar, has now been engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor was party in the main case. It is salutary to note that the court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on - Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No. 2670 of 1996 in CA No. 1867 of 1992, a Bench of three Judges to which one of us, K. Ramaswamy, J., was a member, has held as under:

"The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-Record when the appeal was heard and decided on merits. The review petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the review petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of

review. It would not be in the interest of the profession to permit such practice. That part, he has not obtained "No Objection Certificate" from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the "No Objection Certificate" would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the "No Objection Certificate" from the erstwhile counsel has disentitled him to file the review petition. Even otherwise, the review petition has no merits. It is an attempt to reargue the matter on merits. On these grounds, we dismiss the review petition".

The review application is, therefore, not maintainable."

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12. Sri. Harkauli has relied upon the judgment of this Court in ***Ram Prasad Shukla v. Suraj Lal; (2017) 122 ALR 144***, in which Court has clearly held that review application filed by a new counsel who had not argued the writ petition is not maintainable. Relevant parts of the said judgment is quoted below:—

"I also find substance in the submission of the learned counsel for the opposite party that the review petition is not maintainable in view of the fact that it has not been filed by the counsel, who had argued the writ petition. I also find substance in the submissions of the learned counsel for the opposite party that the plea of deposit under section 30(1) or 30(2) was not agitated before the trial court in the written statements. Therefore, now the petitioner cannot travel beyond the pleadings."

13. The very same view is again taken by this Court in the matter of ***Mohd. Kaleem v. Sumitra Devi; (2021) 144 ALR 651***, in which Court has taken specific view that a review/recall/modification application filed by subsequent counsel is not maintainable and it is nothing but an attempt to delay the compliance of judgment, therefore, review

application is liable to be dismissed with exemplary cost. Relevant parts of the said judgment is quoted below:—

> "12. In view of the above, I am of the considered opinion that the review/recall/modification application by a subsequent counsel is not maintainable. It is nothing but to delay the compliance of the judgment, therefore, exemplary cost is required to be imposed upon the applicant for delaying the compliance of judgment."

14. This issue again came before this Court in ***Ramesh Kumar Sharma v. Gool Poput; (2021) 8 ADJ 123*** in which this Court relying upon the judgment of Apex Court, has held that review application filed by a subsequent counsel is not maintainable. Relevant parts of the said judgment is quoted below:—

> "30. The fact as emanates from the record reveals that Sri. Radhey Shyam Dwivedi and Rajesh Dwivedi were counsels representing the applicants. The Court noted the submission advanced by the learned counsel for the respondents in the judgment, therefore, in view of the judgment of Apex Court in the case of (*Tamil Nadu Electricity Board*) (supra), the review petition at the behest of another counsel is not maintainable. Paragraph 1 of the judgment is being extracted hereinbelow:
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> 33. In the instant case, the matter was argued on behalf of applicants by original counsel, and review was filed by Sri. N.B. Nigam, Advocate who was not the original counsel of the applicants, and even after filing the review, the applicants have changed the counsel and engaged a new counsel Sri. S.K. Chaturvedi. Therefore, this Court is of the view that the review application is not maintainable."

15. I have also perused the judgment passed in ***Kaniz Fatma v. Additional District Judge, [(2008) 70 ALR 361]***, in which Court has taken very same view that review application

cannot be filed by subsequent counsel. Relevant paragraph 25 is quoted below:—

> "25. I am therefore of the considered view that once the writ petition has been decided on merits, the scope of review is very limited and successive review applications are not maintainable. The first review application has been filed by a subsequent counsel Sri. Khalil Ahmad without consent of the original counsel who IS alleged to have given a wrong undertaking before the Court has neither filed review application nor has appeared in the Court to admit or deny the allegations made against him. It would be laying down a bad precedent to allow successive review applications by subsequent counsel by making allegations against the original counsel engaged initially. In the first review application the Court has considered all the aspects of the matter in its judgment and order dated 20.3.2007 by holding that the matter cannot be reopened by engaging another counsel."

16. Apex Court in the matter of ***Tamil Nadu Electricity Board v. N. Raju Reddiar [(1997) 9 SCC 736 : AIR 1997 SC 1005]*** has reiterated the same view that review application filed by a subsequent counsel is not maintainable. Relevant paragraph 1 is quoted below:—

> "1. It is a sad spectacle that new practice unbecoming of worthy and conducive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr. V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on April 24, 1996. Yet another advocate, Mr. S.U.K. Sagar, has now been engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the advocate on record who neither

appeared nor was party in the main case. It is salutary to not that court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession. In Review Petition No. 2670/96 in CA No. 1867/92, a Bench of three Judges to which one of us, K. Ramaswamy, J., was a member, has held as under:

"The record of the appeal indicates that Shri Sudarsh Menon was heard and decided on merits. The Review Petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the Review Petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would be not in the interest of the profession to permit such practice. That part, he has not obtained "No Objection Certificate" from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the "No Objection Certificate" would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the "No Objection Certificate" from the erstwhile counsel has disentitled him to file the Review Petition. Even otherwise, the Review Petition has no merits, It is an attempt to reargue the matter on merits. On these grounds, we dismiss the Review Petition."

17. This Court in the matter of ***Sidheswar Mishra v. State of U.P. [(2006) 9 ADJ 427]*** has also reiterated the settled provisions of law and held that review application filed by a subsequent counsel is not maintainable. Relevant paragraph 14 is quoted below:—

14. The Court is not inclined to open ‘Pandora's Box’ for the following reasons-

Firstly : The law is well settled that recall or review application can be filed only by the counsel who had argued the case and not by a subsequent counsel who is engaged after the decision.

Secondly : The recall application in the instant case is in the nature of review application as the judgment has been delivered on merits after hearing the counsels for the parties and the prayer is to recall the judgment and hear on merits again.

Thirdly : When the recall filed by Sri. Ranjeet Saxena was listed Sri. Brij Lal Verma could not have been authorized by Sri. Ranjeet Saxena to argue the application and the case on merits, the following reasons.

(a) Sri. Ranjeet Saxena is appointed by the Corporation on its panel to argue to argue its cases and Sri. B.L. Verma. The U.P. Power Corporation is a Estate within the meaning of Article 12 of the Constitution and the position of a counsel on its panel is Akur standing counsel appointed by the Government.

(b) Along with standing counsels, brief holders are also appointed by the State Government. If the Corporation had not appointed any brief holders the counsel on the panel cannot handover his government brief to any counsel who is not on the panel to argue government brief.

(c) In any event it was the duty of Sri. Ranjeet Saxena to have been present to argue the recall application filed by him in order to avoid excuse again by the Corporation that case was argued by Sri. B.L. Verma who is not on its panel and not by Sri. Ranjeet Saxena who is on the panel of thue Corporation.

(d) It is very easy to allege by a subsequent counsel that information to his client was not given. If that

be the case the recall application ought to have been filed through Sri. R.D. Khare. Consequently the case after the judgment has been allotted to Sri. Ranjeet Saxena by the Corporation to get recall of order and judgment dated 31.1.2006."

18. Similar issue came before this Court in the matter of ***Rajesh Kumar Tiwari v. UP Shiksha Parishad*** **(Service Single No. 7775 of 2005)**, in which after considering different judgments, this Court has held that review/recall/modification application filed by a subsequent counsel is not maintainable. Relevant part of the said judgment is quoted below:—

"4. On perusal of aforesaid judgments, it is evident that review/recall/modification application by a subsequent counsel is not maintainable."

19. From the perusal of aforesaid judgments, intention of the Courts are very much clear that in case such review applications are entertained, it would be unending process with permission to opening of new Pandora Box. Undoubtedly, if the case is filed and argued by a counsel, he is the only person to file review application for the reasons that he is aware about the facts and grounds argued before this Court. This cannot be agitated by a subsequent counsel who has no concern with the matter till the final disposal of the case. Therefore, such practice of engagement of new counsel for filing review/recall/modification must have been depreciated. Further, granting such permission would be gross misuse of process of law and an attempt to raise new arguments for re-hearing of case on merits.

15. A similar view was taken in ***Yuvraj Singh vs. Harninder Singh and Ors. (12.08.2024 - PHHC) : MANU/PH/2593/2024, Manoj Kumar Sharma v. State of Chhattisgarh, 2025 SCC OnLine Chh 3459, Arjun v. Dharamdas, 2024 SCC OnLine Bom 3539, Pushpalatha v.***

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Anandakrishnan, 2023 SCC OnLine Mad 2289 and Maya Sinha v. Somendra Singh, 2018 SCC OnLine Cal 5829

16. In any case, the Court is not precluded from relying upon the correct law even if it has not been cited on behalf of either of the parties. Accepting the submission would mean that the Court would have to follow the law brought to its notice by the parties, even if incorrect. This would tend to the application of incorrect law and unsettle the settled law.

17. No other point was urged.

18. Therefore, there is no error apparent on the face of the record. The petitioners have the remedy of approaching an appropriate forum in case they feel aggrieved by the judgment rendered by this Court, but the judgment cannot be reviewed in the absence of error apparent on the face of the record.

19. In view of the above, the present petition fails and the same is dismissed, so also the pending miscellaneous application(s), if any.

(Rakesh Kainthla)
Judge

24th April, 2025
(Chander)