IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.283 of 2022
In
Letters Patent Appeal No.625 of 2021

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M/s Gauri Shankar Indane Service Kuchaikote, District- Gopalganj through its Proprietor Ravi Pandey, male, aged about 36 years, S/o Late Gauri Shankar Pandey, R/o Flat No. 201, Sindhu Nilay Apartment, Yaduvansh Path, Nageshwar Colony, P.S.- Buddha Colony, District- Patna

... ... Petitioner/s

Versus

1. Indian Oil Corporation Ltd. through the Executive Director (ED), Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bungalow Chowk, Frazer Road, Patna- 800001.
2. The General Manager I/c. (LPG), Indian Oil Corporation, Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bungalow Chowk, Frazer Road, Patna- 800001, P.S.- Kotwali, District- Patna.
3. The Dy. General Manager (LPG), Area Office, Patna under Bihar State Office, Indian Oil Corporation Ltd., Sahi Bhawan, Exhibition Road, P.S. Kotwali, Patna.
4. Mr. Udai Kumar Son of not known General Manager, I/c. (LPG), Indian Oil Corporation, Bihar State Office, Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bungalow Chowk, Frazer Road, Patna- 800001, P.S.- Kotwali, District-Patna.
5. Mr. Arun Prasad Son of Sri R.N. Prasad the then Chief Area Manager, LPG, Indian Oil Corporation, Patna Area Office, at present Manger, I/c. LPG, UPSO-1, Lucknow, Resident of 402, Maa Sharde Complex, East Boring Canal Road, P.S. Budha Colony, Patna.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Srivastava, Advocate
Mr. Amol Chitlay, Advocate
Mr. Anukriti Jaypuriar, Advocate
Mr. Aishwarya Nand Kumar, Advocate

For the IOCL : Dr. K.N. Singh, Sr. Advocate
Mr. Sanat Kumar Mishra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 29-11-2022

Re: I.A. No. 1 of 2022

Having heard learned counsel for the parties and taking into consideration the submissions made together with the contents of the interlocutory application, the Court is of the opinion that the petitioner has made out a case for condonation of delay in filing of the instant application.

The delay is condoned and I.A. no. 1 of 2022 is allowed

The instant review application has been preferred by the appellant- petitioner for review of the judgment and order dated 2.8.2022 passed in LPA no. 625 of 2021 (arising out of C.W.J.C. no. 559 of 2020) (M/s Gauri Shankar Indane service Kuchaikote, District- Gopalganj versus Indian Oil Corporation and Others).

The facts giving rise to the instant review petition is that pursuant to an advertisement published in the daily newspaper in the year 2007, the father of the petitioner applied for Indane Gas Distributorship at Kuchaikote, District- Gopalganj under the Freedom Fighters category. He was selected and a Letter of Intent ('LOI' in short) dated 30.10.2008 was issued to him, however unfortunately he died the very next day on 31.10.2008. Soon thereafter as per the existing policy, the petitioner being the son of the deceased LOI holder filed his application on 17.02.2009 wherein besides other details he mentioned in clause 14.2 of his application form about having a balance of Rs. 20,40,000/- in his Bank Account number 014111 in the Central Cooperative Bank Limited, Siwan. Based on the points allotted on account of the said balance in his account as also the documents submitted, the petitioner was allotted the distributorship and the same was commissioned. In course of running the distributorship, a new agreement was entered into in 2016.

Subsequently a complaint dated 23.10.2017 was filed by an ex-employee against the petitioner in the P.M.O.. The same was verified by the Indian Oil Corporation Ltd. (IOCL in short) and the IOCL by its letter dated 9.2.2018 intimated the P.M.O that no fraud was found against the petitioner. Another complaint was received in Vigilance Department of the IOCL at Kolkata to the effect that the petitioner had procured the LPG distributorship on the basis of forged and fabricated documents. The complainant provided photocopy of the bank passbook which showed that as against the claim of having a balance of Rs. 20,40,000/-, the petitioner in fact had a balance of only Rs. 2,40,000/- in his account no. 14111 in the Siwan Central

Cooperative Bank Ltd. on the date of his application. On enquiry by the Vigilance Department of IOCL, the bank in its response confirmed that the balance in the said account was Rs. 2,40,000/- from 14.2.2009 to 31.3.2009 and the appellant had withdrawn a sum of Rs. 2,39,500/- by cheque no. 019577. To a further enquiry with respect to issuance of copy of the passbook dated 14.9.2009 and certificates dated 14.2.2009 and 9.3.2009 produced by the petitioner at the time of his selection, the bank responded by letter dated 29.1.2019 stating that the these documents were not issued by the bank. A show cause notice dated 29.8.2009 was issued by the competent authority of the IOCL to the petitioner to which the petitioner filed his replies denying the allegations.

Taking into account all the materials on record including the show cause filed by the petitioner and also having heard him and his advocate in person, by order dated 30.12.2019 issued under the signature of the General Manager I/C LPG of the IOCL, the distributorship of M/s Gauri Shankar Indane Service, Kochaikote was terminated with immediate effect.

The petitioner preferred a writ application (C.W.J.C no. 559 of 2020) in this Court against the order of termination dated 30.12.2019 which was dismissed by order dated 22.5.2020 by the learned Single Judge. Thereafter a review application (C. Rev. no.79 of 2020) was filed by the petitioner praying for review of the judgment and order dated 22.5.2020 passed in C.W.J.C no. 559 of 2020. The learned Single Judge, by order dated 22.9.2021 was pleased to dismiss the said review petition. Thereafter the petitioner preferred an appeal (LPA no. 625 of 2021) against the judgment and order dated 22.5.2020 passed in C.W.J.C no. 559 of 2020 as also against the order dated 22.9.2021 passed in C.Rev. no. 79 of 2020. This Court by its judgment dated 02.08.2022 was pleased to dismiss the appeal. It is against this judgment dated 02.08.2022 dismissing LPA no. 625 of 2021 that the instant review petition has been preferred.

It is submitted by learned counsel for the review petitioner that this Court in its judgment dated 02.08.2022 upheld the order of termination of the LPG distributorship of the petitioner on the ground that the petitioner in his application had incorrectly stated that his bank balance in Siwan Central Cooperative Bank Ltd. was Rs. 20,40,000/-, while it was only Rs. 2,40,000/-. Referring to the order under review it was submitted that on perusing page no. 224 of ledger book no. 88 wherein the said page was covered by pasting a bank ledger page, this Court as per learned counsel, committed an error in concluding that the same indicated connivance of the bank officials facilitating petitioner in preparing forged and manipulated documents on the basis of which petitioner misrepresented before the IOCL. It was submitted that if the petitioner had been involved, then on page no. 225 referred to in the order, he would not have left his total balance in the account as Rs. 2,40,000/- on 14.2.2009. Learned counsel thus submitted that the Court had erred and thus the order from which the instant application arises be reviewed.

In support of his contention learned counsel for the petitioner relied upon the judgment in the case of *Board of Control for Cricket in India and Anr. Versus Netaji Cricket Club and Ors. [(2005) 4 SCC 741]* and more particularly paragraph no. 90 thereof which is as follows:

> "**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"."

At this stage it would relevant to refer to the decision of the Hon'ble Apex Court on the point of review.

In the case of *Lily Thomas and Ors. Versus Union of India and Ors. [(2000) 6 SCC 224]* the Hon'ble Supreme Court held as follows:

> "**52**. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. <u>The review is also not an appeal in disguise.</u> It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in *S. Nagaraj v. State of Karnataka* held: (SCC pp. 619-20, para 19)
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> "19. Review literally and even judicially means re-examination or reconsideration. Basic

philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* that an order made by the Court was final and could not be altered:

'…..nevertheless,if by misprision in embodying the judgments, errors have been introduced, these courts possess, by common law, the same power which the courts of record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.'

Basis for exercise of the power was stated in the same decision as under:

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47

Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

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58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in *Sarla Mudgal case*. It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment in *Sarla Mudgal case.* We have also not found any mistake or error

> apparent on the face of the record requiring a review. Error contemplated 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. No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the judgment. The words "any other sufficient reason appearing in Order 47 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* and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius*. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In *T.C. Basappa v. T Nagappa* this Court held that such error is an error which is a patent error and not a mere wrong decision. (emphasis supplied)

In the case of Board of *Control for Cricket in India* (supra), in paragraph no. 90, as quoted above, the Hon’ble Apex Court held that review would be maintainable in case of mistake on part of Court and also if there existed sufficient reasons. It held that sufficient reason as used in order XLVII Rule 1 of the Code of Civil Procedure was wide enough to include a misconception of fact or law by a Court or even an advocate.

In the case of *Kerala State Electricity Board Versus Hitech Electrothermics & Hydropower Ltd. and Ors. [(2005) 6 SCC 651]* the Hon'ble Supreme Court held as follows:

> "**10**. This Court has referred to several documents on record and also considered the documentary evidence brought on record. This Court on a consideration of the evidence on record concluded that the respondent had been denied power supply by the Board in appropriate time which prevented the respondent from starting the commercial production by 31-12-1996. This is a finding of fact recorded by this Court on the basis of the appreciation of evidence produced before the Court. In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error

> apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise." (emphasis supplied)

The Hon'ble Apex Court in the case of *Jain Studio Ltd. Versus Shin Satellite Public Co. Ltd. [(2006) 5 SCC 501]* held as follows:

> "**11**. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. <u>It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter.</u> A repetition of old and overruled argument is not enough to reopen concluded adjudications. <u>The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases."</u>
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> (emphasis supplied)

In its judgment in the case of *Kamlesh Verma Versus Mayawati & Ors. [(2013) 8 SCC 320]* the Hon'ble Supreme

Court in paragraph no. 20 mentioned the grounds on which review will be maintainable and when the same will not be maintainable.

> "**20**. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:
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> **20.1**. When the review will be maintainable:
>
> *(i)* Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
>
> *(ii)* <u>Mistake or error apparent on the face of the record;</u>
>
> *(iii)* Any other sufficient reason.
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> The words "any other sufficient reason" have been interpreted in *Chhajju Ram v. Neki* and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius* to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd*.
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> **20.2**. When the review will not be maintainable:
>
> *(i)* A repetition of old and overruled argument is not enough to open concluded adjudications.
>
> *(ii)* Minor mistakes of inconsequential import.
>
> *(iii)* Review proceedings cannot be equated with the original hearing of the case.
>
> *(iv)* <u>Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of</u>

justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived." (emphasis supplied)

The difference as to what would be a mere error and what would be an error manifest or apparent on the face of the record came for consideration before the Hon'ble Supreme Court in *Hari Vishnu Kamath Versus Ahmed Ishaque and Ors. (AIR 1955 SC 233)* wherein the Hon'ble Court held as follows:

"(23) It may therefore be taken as settled that a writ of 'certiorari' could be issued to correct an error of law. But 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 on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.

Mr. Pathak for the first respondent contended on the strength of certain observations of Chagla, C. J. in- 'Batuk K. Vyas v. Surat Borough Municipality', AIR 1953 Bom 133 (R), that <u>no error could be said to be apparent on the face of the record if it was not self-evident, & if it required an examination or argument to establish it.</u> This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. <u>The fact is that what is an error apparent on the face of the record cannot be defined precisely or ex-haustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.”</u> (emphasis supplied)

Thus in sum and substance with respect to review, the Hon’ble Supreme Court in the judgments referred to hereinabove has held that the Court is not precluded from recalling or reviewing its order if it is satisfied that it is necessary to do so for the sake of justice. However, the same is to be exercised with extreme care and caution and only in exceptional cases. The Hon'ble Court held that review is not an appeal in disguise and not to be exercised only to correct an error. The same would be maintainable only for correcting a mistake or an error apparent on the face of the record. Further the error apparent on the face of the record is not one which has to be fetched out and searched. The Hon'ble Apex Court held that so far as appreciation of evidence is concerned, the same is fully within the domain of the appellate Court and merely for the reason that there is possibility of two views on the subject, the same cannot be a ground for a review. With respect to finding of fact recorded by the Court on the basis of appreciation of evidence produced, the Hon'ble Court held, that in a review petition, unless it is shown that there is error apparent on the face of the record, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible.

Coming to the facts of the instant case, learned counsel for the petitioner in course of his argument submitted that the learned Court on perusing the page no. 224 of the ledger book no. 88 committed an error in concluding that the same indicated connivance of the bank officials facilitating the petitioner in preparing forged and manipulated documents on the basis of which the petitioner misrepresented the IOCL and was placed at Sl.no.1 of the merit list. It may be mentioned here that in course of hearing of the appeal from which the instant review application arises, on the first occasion officials of the Siwan Cooperative Central Bank Ltd. in spite of the direction of this Court did not produce the original ledger book concerning the petitioner's account. However, subsequently on the Chairman and Managing Director being asked to produce the original documents or face the consequences, the same were produced before the Court. On perusal of the same it transpired that a blank page had been pasted on page no. 224 of the ledger book no. 88 which led this Court to observe that the same indicated connivance of the bank officials facilitating the petitioner in preparing forged and manipulated documents on the basis of which the petitioner misrepresented before the IOCL.

It would be relevant to take note of certain portions of the order dated 2.8.2022, of which review is sought for and the same are quoted hereinbelow:

> "All these documents were made available for perusal of not only all the learned counsel but also petitioner/appellant who was present in Court."
>
> "It is quite intriguing that appellant / petitioner never bothered to inquire about his missing eighteen las rupees from his bank account, which only

> suggests that Rs.2,40,000/- (Two lacs forty thousand) was fraudulently made 20,40,000/- (Twenty lacs forty thousand).
>
> We also notice that petitioner/appellant never placed any material before any authority or Court establishing his financial liquidity. No documents other than the bank statement and the verification report are referred to or relied upon by the petitioner/appellant. No statement of account; bank statement of any other account; income tax returns or any other material was ever produced at any point in time."

Having heard learned counsel for the petitioner and having perused the materials on record, the Court is of the opinion that the petitioner has not been able to point out any error in the order, and by no stretch an error apparent on the face of the record. By way of this review application, the submissions on behalf of the petitioner is merely a rehearing of the appeal on merits and reappreciation of the evidence which has already been considered on the first occasion and the appeal dismissed by judgment dated 02.08.2022. It may also be added here that it is also not the case of the petitioner that he has come across or discovered any new evidence which was not within his knowledge. The Court also does not find that the petitioner has made out any case for review on any of the grounds as provided under Order XLVII of the Code of Civil Procedure.

Thus, not finding any merit in the application, the same is dismissed.

(Partha Sarthy, J)

Sanjay Karol, CJ

(Sanjay Karol, CJ)

Bibhash/-

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