

‘DOG LAW’ ANALYSIS OF THE POWER OF THE COURT TO CAUSE REVIEW OF ITS DECISION: INDIA

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A conjoint reading of Section 114 and Order 47 of the Code of Civil Procedure, 1908 makes it crystal clear that court may allow review petition only on the following three grounds: (i) discovery of new and important matter or evidence, which after the exercise of due diligence was not within the knowledge of the review-petitioner or could not be produced by the review-petitioner at the time when the decree/order/judgment was passed or made; (ii) mistake or error apparent on the face of the record; or (iii) for any other sufficient (cogent) reason. In the matter of *D.R. Somayajulu & Ors v. Attili Appala Swamy & Anr*, (2015) SCCR 254, it was held that an application for review on the ground of discovery of new material facts should be considered with great caution and should not be granted on a mere asking. A review petition can be filed within 30 days from the date of the judgment or order sought to be reviewed. A review petition must be accompanied by a certificate of the lawyer that the review petition is justified.

Precedential Analysis:

	Precedent	Decision
1.	<i>Anadi Nath Roy Chowdhury v. Sudangshu Bhattacharjee</i> , AIR 1987 Cal 130 (131) <i>Calcutta Properties Ltd. v. S.N. Chakraborty</i> , AIR 1988 Cal 131 (132)	An order in favour of a defendant cannot be reviewed without notice to him. Notice to the affected party should be given before passing an order on the review petition.
2.	<i>Smt. Pratibha Bagai v. Dr. Kamlesh Agrawal & Ors</i> , AIR 1992 MP 199	Since the order as regards the return of plaint is appealable, hence review against the said order is not maintainable.

3.	<i>M/s. Abhijit Tea Co. (P) Ltd. v. M/s. Terai Tea Co. (P) Ltd.</i> , AIR 1995 Cal 316	When earlier review application was rejected not on merits, second review application is maintainable.
4.	<i>Bairagi Charan Sethy v. Kangali Behera</i> , AIR 2000 Ori 83 (85)	Merely because interpretation of a particular document is not in its proper perspective is no ground for review.
5.	<i>Ahmedabad Electricity Co. Ltd. v. State of Gujarat</i> , AIR 2003 Guj 157	A mere erroneous decision <i>per se</i> does not permit the court to undertake review. The review jurisdiction can be exercised only on the ground of “error apparent on the face of the record” and not on any other ground.
6.	<i>Niyamavedi v. Union of India</i> , AIR 2004 Ker 81	In this case it was held that, no application for review of an order passed on a review petition shall be entertained.
7.	<i>B. Dhanalakshmi v. M. Shah Jahan</i> , AIR 2004 Mad 512	In this case it was held that, power of review is available only when there is an error apparent on the face of the record and not on erroneous decision. A review application cannot be allowed to be “an appeal in disguise”.
8.	<i>Rajiv Lochan v. Narender Nath</i> , AIR 2004 Del 48	The general principle is that a review must always be heard by the same Judge or by the same Court but there are situations in which this is not possible particularly where the same judicial officer is not available (due to transfer, superannuation or death) and in these situations it is settled law that any other Court of competent jurisdiction can hear the case.
9.	<i>Usha Rani Banik v. Hari Das</i> , AIR 2005 Gau 1	An error apparent on the face of the record cannot be defined precisely and it has to be decided judicially on the facts of each case.

10.	<i>Rekha Mukherjee v. Ashis Kumar Das</i> , AIR 2005 SC 1944	An appeal during the pendency of review petition is not maintainable. Effect of allowing application for review on an original decree is to vacate the original decree.
11.	<i>M.S. Nale v. J.S. Rajput</i> , AIR 2008 SC 429	Where a review petition is dismissed, the doctrine of merger will have no application whatsoever.
12.	<i>Badal & Ors v. M/s. Niranjani Proptech Pvt. Ltd.</i> , RFA No. 178/2018 (Delhi High Court, Decision Dated: 25.04.2018)	The scope of review petition is not to re-argue the matter on merits which has been decided by a detailed judgment.
13.	<i>K.M. Tomar v. State Bank of India & Ors</i> , W.P. (C) No. 791/2000 (Delhi High Court, Decision Dated: 10.04.2018)	A judgment being 'wrong' has two connotations. One is 'wrong' for the purpose of review petition and another 'wrong' is that the judgment is wrong for the purpose of exercising appellate jurisdiction by the appellate court. What is within the realm of jurisdiction of an appellate court for holding the judgment to be wrong or illegal for being set aside is not within the scope of review petition and which lies only if there is some <i>ex facie</i> and complete illegality in the impugned judgment, that is, an error apparent on the face of record.

Crucial aspects albeit the power of the court to cause review of its decision can be summarised as under:

A. Rehearing on merits is not permissible in review:

In the matter of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, AIR 1979 SC 1047, it was held that:

- a. 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. The power of review may be exercised where some mistake or error apparent on the face of the record is found or on any other analogous ground.
- b. The power of review cannot be exercised on the ground that the decision was erroneous on merits, as 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 kinds of errors committed by the subordinate court.

B. What is an error apparent on the face of the record?

In the matter of *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170, it was held that:

- a. An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.
- b. Where an error is not self-evident and if at all it has to be established, it can be established by lengthy and complicated arguments, such an error cannot be cured by exercising the power of review.

Furthermore, in the matter of *State of West Bengal v. Kamal Sengupta*, (2008) 8 SCC 612, it was held that:

- a. The term ‘mistake or error apparent’ by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position.
- b. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47, Rule 1 of the Code of Civil Procedure, 1908.
- c. 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 the point of fact or law.

C. Review is by no means is an appeal in disguise:

- a. In the matter of *Thungabhadra Industries Ltd. v. Govt. of A.P.*, AIR 1964 SC 1372, it was held that:

A review is by no means an appeal in disguise whereof an erroneous decision can be corrected. In any case, while exercising the power of review, the court concerned cannot sit in appeal over its judgment or decision.
- b. Furthermore, in the matter of *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715, it was held that:
 - i. In exercise of jurisdiction under Order 47, Rule 1 of the Code of Civil Procedure, 1908, it is not permissible for an erroneous decision to be ‘reheard and corrected’.
 - ii. There is a clear line of distinction between an erroneous decision and an error apparent on the face of the record. While an erroneous decision can be corrected by the higher forum, but, an error apparent on the face of the record can only be corrected by exercise of the review jurisdiction. Thus, a review petition has a limited purpose and it cannot be allowed to be ‘an appeal in disguise’.
- c. Moreover, in the matter of *Haridas Das v. Usha Rani Banik*, (2006) 4 SCC 78, the Hon’ble Supreme Court while deliberating upon the ‘Explanation’ added to Order 47, Rule 1 by the Code of Civil Procedure (Amendment) Act, 1976 held that:
 - i. A review petition cannot be preferred by an aggrieved party on the grounds that: (a) the aggrieved party was not able to highlight all the aspects concerning the merits of the case properly before the court, or, (b) the aggrieved party could have argued some aspects concerning the case rather more forcefully by drawing strength from some binding precedents but in fact was not able to do so due to some reason.
 - ii. The ‘Explanation’ to Rule 1 of Order 47 of the Code of Civil Procedure, 1908 states that, the fact that the decision on a question of law on which the judgment of the court is based has in fact been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.
 - iii. Where an order in question is appealable then the aggrieved party is said to have an adequate and efficacious remedy available to it and in such situations the

court should exercise the power of review of its order with greatest circumspection.

D. Power of the High Court to review its order passed under Article 226 of the Constitution of India, 1950:

In the matter of *Shivdeo Singh v. State of Punjab*, AIR 1963 SC 1909, followed by the decision in the matter of *Aribam Tuleshwar Sharma* (Supra), it was held that:

- i. There is nothing in Article 226 of the Constitution of India, 1950 to preclude a 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.
- ii. The Hon'ble High Court has to bear in mind while exercising the power of review while sitting in the writ jurisdiction that the power of review cannot be exercised on the ground that the decision rendered by the Hon'ble High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India, 1950 was erroneous on merits.
- iii. The power of review may be exercised on the discovery of some new and important matter or evidence which was not within the knowledge of the party seeking review despite due exercise of diligence when the order was made by the court.

E. Whether subsequent contra judgment by the same court or a superior court on a point of law can be treated as an error apparent on the face of the record for the purpose of review of an earlier judgment?

- i. The view of law taken in a judgment which has been altered by a subsequent decision of a superior court in another case cannot be a valid ground for the review of the judgment.
- ii. In the matter of *Subramanian Swamy v. State of Tamil Nadu*, (2014) 5 SCC 75, it was held that:

The 'Explanation' to Order 47, Rule 1 of the Code of Civil Procedure, 1908 provides that if the decision on a question of law on which the judgment of the court is based, is reversed or modified by the subsequent decision of a superior court in any other case, it shall not be a ground for review of such judgment. Thus, even an

erroneous decision cannot be a ground for the court to undertake review, as 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 in absence of any such error, finality attached to the judgment or order cannot be disturbed.

F. Whether a review petition can be filed after the dismissal of the Special Leave Petition?

- i. In the matter of *K. Rajamouli v. A.V.K.N. Swamy*, (2001) 5 SCC 37, it was held that, dismissal of the special leave petition against the main judgment of the High Court would not constitute *res judicata* when a special leave petition is filed against the order passed in the review petition provided that the review petition was filed prior to the filing of the special leave petition against the main judgment of the High Court. The position would be different where after dismissal of the special leave petition against the main judgment a party files a review petition after a long delay on the ground that the party was prosecuting remedy by way of special leave petition. In such a situation the filing of review would be an abuse of the process of the law.
- ii. In the matter of *Abbai Maligai Partnership Firm & Anr v. K. Santhakumaran & Ors*, (1998) 7 SCC 386, it was held that, if the High Court allows the review petition filed after the special leave petition was dismissed after condoning the delay, it would be treated as an affront to the order of the Supreme Court.
- iii. In the matter of *Meghmala v. G. Narasimha Sengupta*, (2010) 8 SCC 383, it was held that, in case a litigant files a review petition (before the Hon'ble High Court) before filing the special leave petition before the Hon'ble Supreme Court and it remains pending till the special leave petition stands dismissed, the review petition deserves to be considered. In case the review petition is filed subsequent to dismissal of the special leave petition, the process of filing review petition amounts to abuse of process of the court.

G. Directions issued by the Hon'ble Supreme Court to the various High Courts vide its decision dated: 03.03.2017 in the matter of, *Sasi v. Aravindakshan Nari & Ors*, Special Leave Petition (Civil) No. _____ Of 2017 (CC 4339/2017):

- i. An application for review, regard being had to its limited scope, has to be disposed of as expeditiously as possible. An endeavour has to be made by the High Courts to dispose of the applications for review with expediency.
- ii. It is the duty of the Registry of every High Court to place as expeditiously as possible the review petition preferred by the aggrieved party before the concerned Judge/Bench, so that the review application can be dealt with in quite promptitude. If notice is required to be issued to the opposite party in the application for review, then a specific date can be given on which day the matter can be dealt with in accordance with law.
- iii. It is the duty and obligation of a litigant to file review and not to keep it defective as if a defective petition can be allowed to remain on life support, as per his desire. It is the obligation of the counsel filing an application for review to cure or remove the defects at the earliest. The prescription of limitation for filing an application for review has its own sanctity.
- iv. The Registries of the High Courts have a duty to place the matter (review petition) before the Judge/Bench with defects so that there can be pre-emptory orders for removal of defects.

H. Doctrine of 'Procedural Review':

In the matter of, *Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd.*, (2018) 11 SCC 470, it was held that:

- i. Power of review being a statutory right, has to be expressly conferred by a statute.
- ii. The expression 'review' has two distinct dimensions, namely: (a) A procedural review which is either inherent or implied in a court or tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and, (b) A review on merits when error sought to be corrected is one of law and is apparent on the face of the record. No review lies on merits unless a statute specifically provides for it.

- iii. When a review is sought due to a procedural defect, the inadvertent error committed by the court/tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every court/tribunal, irrespective of the fact, whether or not a particular statute confers upon such court/tribunal the power to cause review of its decision.
- iv. Procedural review is possible in cases where there is a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. E.g.: (a) Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or, (b) Where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing.

Excursus:

1. An error which is not self-evident and which can be discovered by a long drawn process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power of review under Section 114 read with Order 47, Rule 1 of the Code of Civil Procedure, 1908.
2. An erroneous order or decision cannot be corrected in the guise of exercise of power of review.
3. A decision or order of a court cannot be reviewed under Section 114 read with Order 47, Rule 1 of the Code of Civil Procedure, 1908 on the basis of subsequent decision or judgment of a coordinate or larger bench or a superior court in any other matter.
4. While considering an application for review, the court must confine its adjudication with reference to the material which was available with it at the time of the initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order or decision as vitiated by an error apparent on the face of the record.
5. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

6. In the judgment of the Hon'ble Supreme Court of India, namely, ***Green View Tea & Industries v. Collector***, (2004) 4 SCC 112, it was held that, if review application has been filed before the High Court prior to the filing of the special leave petition before the Supreme Court and the review petition is decided (or rejected) by the High Court, then, the special leave petition against that order of review would be maintainable. In case the review application has been filed subsequent to dismissal of the special leave petition it would amount to abuse of process of the court.
7. The decree that is subsequently passed on review whether it modifies, reverses or confirms the original decree (in whole or in part) is a new decree which supersedes the original decree.
8. In case review is granted against whole of the original decree then an appeal would not be maintainable there from. In case review is granted against part only of the original decree, an appeal would be maintainable only from that part of the original decree in respect whereof review was not granted. If a review application is permitted to be withdrawn by the court following principles analogous to those under Order 23, Rule 1, then, it would render the original decree wide open to challenge in an appeal.