

GAHC010071592022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./69/2022

HERAMBA KUMAR DAS

VERSUS

ARCHANA DAS

Advocate for the Petitioner : MR. A DHAR
Advocate for the Respondent : MR. R S MISHRA

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Review Petitioner: Mr. A. Dhar,
Advocate.

For the Respondent:
Mr. R.S. Mishra,
Advocate.

Date of Hearing : 16.03.2023.

Date of Judgment : 17.03.2023.

JUDGMENT AND ORDER (CAV)

Heard the learned counsel Mr. A. Dhar appearing for the review petitioner. Also heard the learned counsel Mr. R.S. Mishra appearing for the sole respondent.

2. The present petition has been filed under Order 47 Rules 1 2 and Section 151 of the Code of Civil Procedure praying for reviewing the order passed by this Court on 17.01.2022 in CRP(I/O) No.384 of 2019.
3. The learned Addl. District Judge, Bajali, Pathsala in Misc. (J) Case No.06/2019 arising out of T.S.(M) 14/2018 directed the present petitioner to pay maintenance of Rs.7,000/- per month to the sole respondent. The petitioner earns monthly salary of Rs.49,881/-. After subscribing to different heads, he earned Rs.19,873/- only.
4. The petitioner moved this Court challenging the order of the learned Addl. District Judge claiming that the maintenance *pendente lite* was exorbitant for him.
5. After hearing both sides, this Court directed the petitioner to pay a monthly maintenance of Rs.12,000/-.
6. Claiming that the amount of Rs.12,000/- is exorbitant for him to pay, he filed the present review petition.
7. I have given my anxious considerations to the submissions of the learned counsels of both sides.
8. In the guise of a review petition, nobody is allowed to file an appeal.

The question arises as to whether the powers of review provided by Order 47 Rule 1 of the CPC can be applied in the present case.

9. A brief visit to the relevant provision would be fruitful. Order 47, Rule 1 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 applies for the review.

[Explanation-The fact that the decision on a question of law on which the judgment of the Court is based has 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.]

9. In *Union of India v. Sandur Manganese & Iron Ores Ltd.*, (2013) 8 SCC 337, the Supreme Court has held as under-

"12. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

12.1. Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him.

12.2. Mistake or error apparent on the face of the record.

12.3. Any other sufficient reason. The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Mar Poulose Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] , to mean "a reason sufficient on grounds, at least analogous to those specified in the rule"."

10. Thus, it is clear that a review petition is maintainable only on the following grounds.

(a) A new matter or evidence has been discovered which was not in the knowledge of the petitioner in spite of due diligence;

(b) Although such matter or evidence was in the knowledge but the same could not be produced before the court when the judgment under review was passed or ordered;

(c) There is some mistake or error apparent on the face of the record or for any other sufficient reason.

11. In the case in hand, the grounds on which a review can be allowed do not exist. Therefore, the review petition is found to be devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant