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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 06th DECEMBER, 2023

IN THE MATTER OF:

\+ **W.P.(C) 17773/2022**

EDEN CASTLE SCHOOL AND ANR. ..... Petitioners

Through:

versus

GOVT. OF NCT OF DELHI AND ORS. ..... Respondents

Through: Mr. Udit Malik, ASC for GNCTD with Mr. Vishal Chanda, Advocate.
Mr. Anil Sethi, Mr. Swaran Kamal and Mr. Samarth Rai Sethi, Advocates for R-4.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT(ORAL)

CM APPL. 62867/2023

This application has been filed by the Review Petitioner seeking condonation of delay of seven days in filing the Review Petition.

For the reasons stated in the application, the same is allowed.

The delay of seven days in filing the Review Petition is condoned.

The application is disposed of.

REVIEW PET. 334/2023

1. The Review Petitioner has approached this Court challenging the Order dated 13.09.2023, passed by this Court in W.P.(C) 17773/2022.

2. The Petitioner had approached this Court for issuance of a writ of

mandamus directing the Respondent Nos.1 and 2 to ensure free ingress and egress of children studying in the Petitioner No.1/school, for the parents who come to drop and pick the children, for the teachers of the school along with other staff members and also for the general public which is being restricted due to the closure of gates on the public road at Block A-2, Paschim Vihar, New Delhi 110063.

3. This Court had sought for a Status Report. Various Status Reports were filed before this Court. In the Status Report dated 11.09.2023, the SHO had reported as under:

> "*Sub:- Status Report*
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> *Respected Sir,*
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> *In continuation of earlier status reports and in compliance of order dated 10.08.2023 of this hon'ble court, verification regarding status of opening and closing timings of gates of A-2 Block, Paschim Vihar, it is submitted that out of 15 iron gates installed around A-2 Block, 6 gates (No. 3, 6, 8, 10, 13 & 14) installed on service roads of the colony were found completely locked even during day time. Other gates were found open. On enquiry it is revealed that gate No. 1 remains open for 24 hrs. Remaining gates remain open from 5 AM to 11 PM since last one week. Photographs of the gates taken on 11.09.2023 are enclosed herewith for kind perusal.*
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> *Any further directions issued by the hon'ble court will be complied with.*"

4. The Status Report filed by the MCD states that only service lanes were closed and since the grievance of the school had been redressed, this Court disposed of the Writ Petition by permitting the School to approach

this Court again if the gates are closed again and if hindrance is caused again in the ingress and egress of children studying in the school, their parents, teachers and other staff members of the school.

5. The instant Review Petition has been filed stating that the School in question is in Paschim Vihar area and as per the RWA records there are 419 registered members and 56 tenants in the area, i.e. total 475 families are residing around the school. It is stated that due to School there is heavy crowding and the parents block the road by parking their cars on the road. The instant Review Petition has, therefore, been filed by Respondent No.4 seeking for a modification in the Order dated 13.09.2023 by adding that the parents who bring their child to school in their private cars shall drop their child outside the colony and that the School must take adequate steps to provide security guards/personnel to regulate the traffic jam in the colony.

6. The scope of review petition has been succinctly laid down by the Apex Court in a number of judgments. The scope of review is quite limited and review of a judgment can be done only in cases where there is an apparent error on the face of record.

7. The Apex Court in the case of Haridas Das Vs. Usha Rani Bank (Smt) & Ors., **(2006) 4 SCC 78,** has observed as under:-

> ***"13.*** *In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it "may make such order thereon as it thinks fit". The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason".*

> *The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that 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. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. This Court in Thungabhadra Industries Ltd. v. Govt. of A.P.*[1] *held as follows: (SCR p. 186)*
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> *"[T]here is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. ... where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."*

8. In the aforesaid case, the Apex Court has held that rehearing of a case can be done on account of some mistake or an error apparent on the face of

the record or for any other sufficient reason.

9. Similarly the Apex Court in State of West Bengal and Ors. Vs. Kamal Sengupta and Anr., **(2008) 8 SCC 612,** has observed as under:-

> *"**22.** 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. 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 CPC or Section 22(3)(f) of the Act. To put it differently 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/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.*
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> *xxx*
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> ***35.** The principles which can be culled out from the abovenoted judgments are:*
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> *(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.*
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> *(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.*
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> *(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.*

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) 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/tribunal earlier."

10. The Apex Court again while dealing with the scope of interference and limitation of review in the case of Inderchand Jain (dead) Through LRs Vs. Motilal (dead) Through LRs, **(2009) 14 SCC 663**, observed as under :-

***"33.** The High Court had rightly noticed the review jurisdiction of the court, which is as under:*

"The law on the subject—exercise of power of review, as propounded by the Apex Court and

various other High Courts may be summarised as hereunder:

(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error 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 the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit."

In our opinion, the principles of law enumerated by it, in the facts of this case, have wrongly been applied."

11. The Apex Court in the case of S. Bagirathi Ammal Vs. Palani Roman Catholic Mission, **(2009) 10 SCC 464,** has observed as under :-

*"**12.** An 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. In other words, it must be an error of inadvertence. It should be*

> *something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order. With this background, let us analyse the impugned judgment of the High Court and find out whether it satisfies any of the tests formulated above.*
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> *xxx*
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> ***26.*** *As held earlier, if the judgment/order is vitiated by an apparent error or it is a palpable wrong and if the error is self-evident, review is permissible and in this case the High Court has rightly applied the said principles as provided under Order 47 Rule 1 CPC. In view of the same, we are unable to accept the arguments of learned Senior Counsel appearing for the appellant, on the other hand, we are in entire agreement with the view expressed by the High Court."*

12. The Petitioner has not been able to point out any error apparent on the face of the record. Rather, the Petitioner has chosen to re-argue the case and has sought for a fresh direction that the parents who are coming in car to drop their children to the school be directed to drop the children outside the colony. A child studying in a primary class cannot be expected to walk in rain and blistering heat from the School to the gate of the colony. At the time when the School opens and when the school time is over, there is

bound to be rush for which the remedy before the Review Petitioner is to approach the authorities to depute persons to manage the traffic. Ingress and egress to the School cannot be stopped as it will cause problems to the school as well as the general public.

13. Convenience of the residents of the colony alone cannot outweigh the interest of the general public at large. The place where the school is functioning has been earmarked for the school only and the school is functioning with valid permission. It is not as if the Petitioner's colony is the only colony where a school is functioning inside the colony. Since there is no error apparent on the face of the record and the attempt of the Petitioner is to re-argue the case, this Court is not inclined to entertain the instant Review Petition.

14. Accordingly, the Review petition is dismissed.

15. Liberty is granted to the Review Petitioner to approach the authorities and find a solution to manage the traffic outside the school. The Review Petitioner is also directed to coordinate with the local residents to solve the issue which arises only for a small duration.

16. Needless to state that the cars which drop the children to the school and picks them back cannot be permitted to be in the colony for the entire duration of the school hours.

SUBRAMONIUM PRASAD, J

DECEMBER 06, 2023
Rahul