

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shekhar B. Saraf

R.V.W. 95 OF 2018

In

W.P.A. 17197 of 2017

I.A.CAN 1 of 2018 (old No. CAN 4952 of 2018)

HARISADHAN HALDER & ORS.

Versus

MADHAI MONDAL & ORS.

For the Respondents/Applicants

:Mr.Pankaj Halder,
Mr. Sanatan Panja,
Mr. Tapas Manna,

For the Writ Petitioners/Respondents

:Mr. Indranath Mitra,
Mr. Subhankar Das,

Heard on : July 04, 2022

Judgment on: July 04, 2022

Order Dictated in Open Court :

1. Heard learned Counsel appearing for the parties in the Review Petition.
2. The contention of the respondents/applicants is that the impugned order dated July 11, 2017 was passed in the Writ Petition ex parte.

He further submits that the order restraining the petitioner herein from carrying on any construction or further construction at the plot in question was passed without jurisdiction as the father of the petitioners had obtained a sanction plan in 1994. He submits that the above fact was not brought before the knowledge of the Court, and accordingly, the review lies.

3. It is to be seen from the order passed on July 11, 2017 that the Hon'ble Judge had directed the respondent no.9 being the Pradhan of the Raidhigi Gram Panchayat to consider the representation of the writ petitioner and till hearing of the said representation of the writ petitioner, no further construction was to be carried out at the plot concerned.
4. Though the order dated July 11, 2017 was passed by the Hon'ble Court ex parte, it is to be noted that service of the writ petition was duly made upon the respondents/applicants, and despite that none appeared for such respondents/applicants.
5. At the outset, it would be apt to discuss the jurisdiction of this Court to review its own judgment. I had the occasion to examine the principles of review while sitting on the Division Bench with the Hon'ble Justice Harish Tandon in the case of ***The State of West Bengal & Anr. Vs. Confederation of State Government Employees & Ors.*** reported in ***(2019) 3 WBLR (Cal) 39***. After

examining a catena of Supreme Court Judgments [See **Sasi (D through LRs -v- Aravindakshan Nair** reported in **(2017) 4 SCC**, paras 6-9; **Haridas Das -v- Smt. Usha Rani Banik** reported in **(2006) 4 SCC 78**, paras 15-18; **Parsion Devi -v- Sumitri Devi** reported in **1997 (8) SCC 715**, paras 7-10; **Aribam Tuleshwar Sharma -v- Aribam Pishak Sharma** reported in **(1979) 4 SCC 389**, para 3] I had culled out the principles that emerge from a perusal of the land-mark Supreme Court Judgments on the issue of review. The same are delineated below :-

A. The power to review is inherent in the High Court and the High Court can review its own order/judgment passed in a writ petition.

B. This power of review is a limited power and would be governed by the principles of Section 151 read with Order XLVII Rule 1 of the Code of Civil Procedure.

C. Firstly, a Court can review its own judgment when there is discovery of new and important matter or evidence that was in spite of exercise of due diligence not within the knowledge or could not be produced due to cogent reasons by the party seeking a review. Secondly, the court may review its order or judgment on account of some mistake or error apparent on the face of the record. Thirdly, a residuary³ clause in Rule 1 of Order XLVII provides for a review 'for any other sufficient reason'. It is to be noted that the Apex Court on several occasions has

held that the third condition “for any other sufficient reason” has to be read within the four corners of the first two conditions.

D. An error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record.

E. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”. There is a sharp distinction between an erroneous decision that can be only appealed against and an error apparent on the face of the record that is subject to review.

6. I am of the opinion that, given the limited scope of review, this Review Application does not satisfy any of the aforementioned principles regarding review by the Court of its own judgment.

7. It is also to be noted that the respondents/ applicants have claimed that the petitioners/respondents have suppressed material facts in order to secure an ex parte order dated July 11, 2017 from this Court. The respondents/applicants claimed that the writ petitioner/respondent did not disclose to the Court that a sanction plan for the said plot had already been obtained in 1994 by the father of the applicants herein.

8. It is axiomatic that any petitioner in a Writ Petition has to approach the Court with “clean hands” based on good faith and has to produce before the Court all material facts that are relevant for adjudication of the said matter.

9. In ***Asiatic Engineering Co. -v- Achhru Ram and others*** reported in ***AIR 1951 Allahabad 746 (Full Bench)*** the Court observed that no relief can be granted in a writ petition under Article 226 which is based on misstatement or suppression of material facts. As authored by Ruma Pal, J. in ***S.J.S. Business Enterprises (P) Ltd. -v- State of Bihar and others*** reported in ***(2004) 7 SCC 166***, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. The relevant portion is provided below:

“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material from the consideration of the court, whatever view the court may have taken.....”

10. It is the contention of the petitioner in this Review Petition that there has been suppression of material facts. In my view, this submission is incorrect as there has been no suppression of material facts whatsoever. Upon a plain reading of the order dated July 11, 2017 it is clear that the Court only directed the respondent no. 9 to decide on the representation of the writ petitioner and while doing so granted an opportunity of hearing to

be given to both the writ petitioner and the private respondent (the petitioner herein). In spite of service, the private respondent chose not to appear in the matter and therefore was not able to place the facts before the Court. However, the decision of the Court was simpliciter to direct the respondent no. 9 to grant an opportunity of hearing to both the parties and decide the issue based upon relevant documents that may be produced by both the parties. Accordingly, the Court by itself did not go into merits of the case of the writ petitioner. In light of the same, the attempt of the petitioner to file a Review Application one year after the order dated July 11, 2017 is clearly a mala fide action and is bereft of any merit whatsoever. One may further note that new facts that have been brought before this Court in the Review Petition were in the special knowledge of the applicant herein and was not and could not have been in the knowledge of the writ petitioner. Therefore, having not appeared in the matter, due care was not taken by the applicant herein. In light of the same, it is clear that in the present facts and circumstances no case is made out for review of the order dated July 11, 2017.

11. Accordingly, the Review Petition is dismissed.

12. There shall be no order as to costs.

13. Urgent Photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities

(Shekhar B. Saraf, J.)