

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT JAMMU**

**RP no. 53/2022**  
**In [WP(C) 182/2021]**

Reserved on: 12.07.2023  
Date of Decision: 21.07.2023

**Abdul Rashid Wani**

.....Petitioner

Through: Mr. B. A. Misri, Advocate

**Versus**

**Union Territory of J&K and others (Home Department)**

Through:

.....Respondent(s)

**CORAM:**

**Hon'ble The Chief Justice**

**Hon'ble Mr. Justice Javed Iqbal Wani, Judge**

**J U D G E M E N T**

**Per Javed Iqbal J**

1. In the instant petition, the petitioner seeks review of judgment/order dated 28.6.2022 passed in the WP (C) 182 of 2021 titled as “**Abdul Rashid Wani vs. UT of J&K and others**”.

2. Before proceeding to advert to the petition in hand, brief background/reference of the case becomes imperative hereunder:

The petitioner herein maintained the petition *supra* with the following reliefs:

- I. By issuance of writ of mandamus, the respondents may be directed to pay ground rent and manse profits from the date of illegal occupation till restoration of possession or payment of compensation and damages in lieu of acquisition with interest @ 18%.

- II. By issuance of writ of mandamus, the respondents be directed to hand over the possession of the land measuring 7 kanal 18 marlas under khasra no. 525, khewat no. 174 and khata no. 922 situated at Mouza Kangan to the petitioner, or in the alternative to initiate proceedings under the Land Acquisition Act and pay the compensation accordingly as per present market value.
  - III. By the writ of prohibition, the respondents be restrained not to make any construction over the said land of the petitioner till the final disposal of the writ petition.
3. The reliefs aforesaid came to be prayed by the petitioner on the premise that he is the owner of land measuring 7 kanals 18 marlas falling under survey number 525, khewat no. 174, khata no. 922 situated at Mouza Kangan District Ganderbal and possession of the said land was taken over by the respondents in the year 1953 and a building for police station Kangan was constructed thereon without acquiring the said land in accordance with law.

The petitioner claimed to have approached the respondents for the release of payment of compensation for having occupied the said land, which compensation was stated to have not been paid by the respondents. The land in question in fact is stated to have been taken over by the respondents from the predecessor-in-interest of the petitioner who is stated to have not acquiesced or surrendered his rights in respect of the land in question. The petitioner further stated in the petition that the land in question is in continuous possession of the respondents and that he and his father as well approached the respondents from time to time to hand over the possession of the land back to them. Various correspondences in this regard entered into between the petitioner and the respondents were stated to have got

damaged in the floods. A legal notice was also stated to have been served upon the respondent 1 on 1.2.2020 in this behalf by the petitioner, followed by communications/reminders dated 7.2.2020, 10.7.2020 and 3.11.2020.

4. The respondents filed reply to the petition at the **pre-admission stage** on 13.8.2021 wherein the claim of the petitioner was denied, besides a preliminary objection came to be raised in the said objections that the petition of the petitioner is hit by *laches* as the petitioner had filed the petition after a period of around 68 years without explaining the said delay while it came to be simultaneously admitted in the objections that the land in question was taken over by the police department in the year 1953 and the police station in question constructed thereon and that in the record being Register no. 16 part IV of the Police Station Kangan, the land in question is shown under the occupation of the police. It came to be further stated in the objections that the petitioner never approached the respondent 3 for payment of compensation or rent of the land in question. It also came to be stated in the objections that the petitioner is working as Assistant Sub-Inspector in the police department denying his contention that he has no source of livelihood and that the petitioner suppressed vital facts and approached the court with unclean hands.
5. The writ petition came to be admitted to hearing on 15.3.2022 requiring the counsel for the respondents to file counter affidavit within four weeks whereafter the respondents filed the counter affidavit on 24.6.2022 and *inter alia* reiterated the stand taken by them in the reply

filed at the pre-admission stage that the petition is hit by the doctrine of *laches*. The petitioner, however, did not choose to file any rejoinder in response to the said counter affidavit and the petition finally came to be dismissed in terms of judgment/order dated 28.6.2022, which is under review in this petition.

**Heard learned counsel for the petitioner and perused the record.**

6. Perusal of the petition tends to show that two fundamental grounds are urged by the petitioner in the instant petition for review of the order/judgment dated 28.6.2022; ‘firstly’, that the petition of the petitioner could not have been dismissed on the ground of *delay and laches* after the writ petition was admitted to hearing in view of judgments referred in the instant petition which could not be produced or referred by the counsel appearing for the petitioner at the time of advancing arguments during hearing of the case; and ‘secondly’ that there is apparent error of law warranting appropriate consideration of the said law being applicable to the case of the petitioner.
7. Before advertng to the aforesaid grounds supra, it would be appropriate to refer to relevant provisions of law relating to the **Doctrine of Review**.

**Rules 65 and 66 (4)** of Jammu and Kashmir High Court Rules of 1999 deals with the provision of Review and provide as under:

**65. Application for review of judgment:**

The court may review its judgment or order but no application for review shall be entertained except on the ground mentioned in order XL VII Rule 1 of the Code.

66(4) The application for review shall be disposed of by the court in accordance with the provisions of Order XL VI of the Code.

A bare perusal of the aforesaid Rules postulate that the court may review its judgment or order upon an application which has to be entertained only and exclusively on the grounds mentioned in Order 47 Rule 1 CPC.

The ambit and scope of provision of Review as contained in Section 114 and Order 47 CPC has been elaborately considered and dealt with by the Apex Court in case titled as **Inderchand Jain Vs. Motilal reported in 2009 (14) SCC 663** wherein at paras 7 to 11 it has been provided as under:

"7. Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a Civil Court and consequently by the appellate courts. The words "subject as aforesaid" occurring in Section 114 of the Code means subject to such conditions and limitations as may be prescribed as appearing in [Section 113](#) thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under:

"17. The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which 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."*

Thus it is settled and normal rule of law that once a judgment is pronounced or order is made, the court become is *functus officio* (ceases to have control over the matter) and as such a judgment or order becomes final and cannot be altered, changed, varied or modified, however, the doctrine of the review is an exception to this principle of law and can be allowed in certain circumstances only as provided and envisaged under Section 114 read with Order 47 CPC.

Furthermore, it is significant to mention here that a right of the review has been held by courts as both substantive as well as procedural, and as a substantive right has to be conferred by law either expressly or by necessary implication and there can be no inherent right of review, whereas as a matter of procedure every court can correct an inadvertent error which has crept in the order or judgment due to procedural defect or arithmetical or clerical error or by misrepresentation or fraud of a party to the proceeding. **Law is also no more *res integra*** that the court while considering a review petition does not sit in appeal over its own order as rehearing of matter is impermissible in law. The aforesaid view has been expressed by the Apex court in case titled as **Lily Thomas v. Union of India (2000) 6 SCC 224** wherein at para 56 following has been laid down:

*“56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise.”*

A further reference hereunder to the latest judgment of the Apex court being relevant herein passed in case titled as **Shri Ram Sahu (Dead) through LRs and others vs. Vinod Kumar Rawat (2020)**

**Online SC 896 (reported as well in 2021 (1) JKJ 77 [(SC)]** also becomes imperative, wherein at paras 33 and 34 following has been laid down:

33. In the case of [State of West Bengal and Others vs. Kamal Sengupta and Anr.](#), (2008) 8 SCC 612, this Court had an occasion to consider what can be said to be “mistake or error apparent on the face of record”. In para 22 to 35 it is observed and held 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 selfevident 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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26. In [Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius](#) (supra) this Court interpreted the provisions contained in the Travancore Code of Civil Procedure which are analogous to Order 47 Rule 1 and observed:

“32. ... Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.

It may allow a review on three specified grounds, namely,

(i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant’s knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason.

It has been held by the Judicial Committee that the words ‘any other sufficient reason’ must mean ‘a reason sufficient on grounds, least analogous to those specified in the rule.’”

27. In [Thungabhadra Industries Ltd. v. Govt. of A.P.](#) (supra) it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected.

28. *In Parsion Devi v. Sumitri Devi (Supra)* it was held as under: (SCC p. 716) "Under Order 47 Rule 1 CPC a judgment may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record. An error which is not selfevident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

34. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review.

8. Keeping in mind the aforesaid provisions and principles of law and reverting back to the case in hand it is an admitted fact that the plea of *delay and laches* came to be raised and urged by the respondents in the reply affidavit filed to the petition at **pre-admission stage** as also in the counter affidavit filed at the **post-admission stage**. Perusal of the record would reveal that the said plea of *delay and laches* urged at pre-admission stage by the respondents in the reply affidavit has not been



considered by the court on 15.3.2022 i.e. the date of admission of the petition, therefore, it cannot by any stretch of imagination be said that the respondents could not press the said plea at post-admission stage of the petition, more so, in view of the fact that the said plea of *delay and laches* came to be reiterated by the respondents in the counter affidavit filed at the post-admission stage and said plea was never either opposed or rebutted by the petitioner by filing a rejoinder affidavit, so much so the said plea was also not controverted by the counsel for the petitioner at the time of final hearing of the petition, but the same is now being controverted by the petitioner in the instant petition on the strength of the judgments referred in the instant petition.

9. Having regard to the principles of law laid down by the Apex Court in the cases of **Inderchand Jain, Lily Thomas and Shri Ram Sahu** *supra*, the contention of the counsel for the petitioner that the question of *delay and laches* could not have been entertained and considered by the court after the admission of the writ petition cannot by any stretch of imagination said to be ground available to the petitioner to seek review of the judgment/order under review either on the ground that the judgments supporting the said contention of the petitioner came to be discovered after the passing of the judgment under review or on the ground that entertaining and accepting the ground of *delay and laches* at post-admission stage is an apparent error of law.

The judgments referred in the Review petition and relied upon for seeking review of the judgment/order under review, having regard to the facts and circumstances of the case and the position of law

noticed and considered in the preceding paras, are quite distinguishable and misplaced in the facts and circumstances of the instant case.

10. For what has been observed, considered and analyzed hereinabove, we are of the considered view that the grounds urged in the instant review petition do not call for review of the judgment/order dated 28.6.2022 passed in WP(C) 182/2021. Resultantly, the instant review petition is dismissed.

**(Javed Iqbal Wani)**  
Judge

**(N. Kotiswar Singh)**  
Chief Justice

**Srinagar**  
21.7.2023  
N Ahmad

Whether the order is speaking?  
Whether approved for reporting?

Yes  
Yes

