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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE

&
HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 8th OF JULY, 2022

REVIEW PETITION No. 1103 of 2018

Between:-

1. ANAND DEEP SINGH,

2. NAV KIRAN DEEP,

3. HARKANWAL PREET,

.....PETITIONERS

*(BY MRS. SHOBHA MENON - SENIOR ADVOCATE WITH MS.
AANCHAL SARAF - ADVOCATE)*

AND

1. STATE OF MADHYA PRADESH, THROUGH
COLLECTOR BHOPAL, DISTRICT BHOPAL
(MADHYA PRADESH)

2. SMT. KIRPAL KAUR

3. SMT. ANTESHWAR ANAND

(i) MRS. MANEKA GANDHI, 14 ASHOKA ROAD,
NEW DELHI,
(ii) MRS. AMBIKA SHUKLA,

(iii) MR. VIRENDRA ANAND,

(ii) AND (iii) R/O 154 JOR BAGH, NEW DELHI.

4. **SMT. JASJEET SINGH (SINCE DECEASED) WIFE OF LATE SARDAR MANINDER SINGH, THROUGH HER LRS. APPLICANT 1 TO 3 AND RESPONDENT NO.5 (ALL ON RECORD AS LRS OF SARDAR MANINDER SINGH).**
5. **SHRI VIRENDRA MOHAN SINGH (SON OF LATE SARDAR MANINDER SINGH) AGED ABOUT 59 YEARS, R/O W-127, GREATER KAILASH II, NEW DELHI - 110048.**
6. **SMT. RANJEET KAUR, W/O LATE KANWAR MAHINDERPAL SINGH, AGED ABOUT 82 YEARS;**
7. **MS. DAYANITA SINGH, AGED 56 YEARS, D/O KANWAR MAHINDERPAL SINGH;**
8. **MS. KOMAL SINGH, AGED 54 YEARS, D/O KANWAR MAHINDERPAL SINGH;**
9. **MS. KAVITA SINGH, AGED 51 YEARS, D/O KANWAR MAHINDERPAL SINGH;**
(6-9 ALL RESIDENTS OF 7 PASHCHIMI MARG, VASANT VIHAR, NEW DELHI)
10. **ADMINISTRATIVE MEMBER, BOARD OF REVENUE, MADHYA PRADESH, GWALIOR, DISTRICT GWALIOR (MADHYA PRADESH)**
11. **SHRI S.P.SINGH, MEMBER, BOARD OF REVENUE, MADHYA PRADESH, GWALIOR, DISTRICT GWALIOR (MADHYA PRADESH)**
12. **COMMISSIONER BHOPAL, DISTRICT BHOPAL (MADHYA PRADESH)**
13. **COLLECTOR SEHORE DISTT-SEHORE (MADHYA PRADESH)**
14. **SUB DIVISIONAL OFFICER BHOPAL DISTT-BHOPAL (MADHYA PRADESH)**
15. **NAIB TEHSILDAR BHOPAL DISTT-BHOPAL (MADHYA PRADESH)**

16. **MS. RISHMA SINGH D/O KANWAR
MAHINDERPAL SINGH, AGED ABOUT 49 YEARS,
7 PASHCHIMI MARG VASANT VIHAR (DELHI)**

.....RESPONDENTS

*(MR. AMIT SETH - DEPUTY ADVOCATE GENERAL FOR
RESPONDENT NO.1/STATE; MR. K.C. GHILDIYAL - SENIOR
ADVOCATE WITH MR. ADITYA VEER SINGH - ADVOCATE FOR
RESPONDENT NO.6 AND 16 AND MR. UMESH TRIPATHI -
ADVOCATE FOR RESPONDENT R-5.)*

.....
*This petition coming on for orders this day, **Hon'ble Shri Justice Ravi
Malimath, Chief Justice** passed the following:*

ORDER

Miscellaneous Petition No.1395 of 1990 filed under Article 226/227 of the Constitution of India, was allowed by the learned Single Judge by a final order dated 21.09.2006. Seeking to recall the said order, Miscellaneous Civil Case No.2049 of 2008 was filed by the respondents No.5, 6 and 7 under Chapter 2 Rule 10 of the High Court of Madhya Pradesh Rules, 2008, which was dismissed by the Division Bench of this Court vide order dated 19.11.2014. Questioning the same, Review Petition No.398 of 2015 was filed under Order XLVII Rule 1 of the C.P.C. seeking recall of the order dated 19.11.2014. Vide order dated 13.04.2018 passed by the Division Bench of this Court, the same was dismissed. Thereafter, the instant Review Petition is filed under Order XLVII Rule 1 of the C.P.C. seeking to review the order dated 13.04.2018 passed by the Division Bench of this Court in Review Petition No.398 of 2015.

Mrs. Shobha Menon, learned Senior Counsel appearing for the review petitioners contends that gross error has occasioned and hence, the court has jurisdiction to entertain the same. That this petition has been filed seeking to review the earlier order. That on facts the review petitioners have a very good case and hence, the review petition requires to be considered.

An initial objection is raised by Mr. Amit Seth, learned Deputy Advocate

General that in terms of Order XLVII Rule 9 of the Code of Civil Procedure a review of a review is not maintainable. However, the same is countered by Mrs. Shobha Menon, learned Senior Counsel who relies on a Division Bench judgment of this Court in the case of *State of Madhya Pradesh and another vs. Jaswantpuri and others*, reported in *AIR 1989 Madhya Pradesh 115*. She has also placed reliance on the judgment of Hon'ble Supreme Court in the case of *Shivdev Singh and others vs. State of Punjab and others*, reported in *AIR 1963 SC 1909* as also on another Division Bench judgment of this Court in the case of *Lakhanlal vs. The State of Madhya Pradesh*, passed in Review Petition No.524 of 2016, decided on 03.03.2017.

Heard learned counsels.

Firstly, the learned senior counsel has placed reliance on a specific portion of para 4 of the judgment in the case of *Jaswantpuri (supra)*. The same reads as follows:-

"4.....A review may be granted because of mistakes of parties or of their attorneys as well as for mistakes of the Court, Clerk of Court or of the Commissioner in particular proceedings. Mistake consisting an error of computation, or a mistake which is the result of accident or misfortune may well afford a ground for review."

On hearing learned counsels, we are unable to comprehend as to how this relates to the case of the petitioners. The objection being raised is that the second review is not maintainable. Admittedly, the earlier Review Petition No.398 of 2015 was filed under Order XLVII Rule 1 of the Code of Civil Procedure. What is sought for herein is a review of that order. Therefore, the question that is raised by the respondents is quite different than what is being relied upon in the aforesaid judgment. Therefore, the said judgment has no

nexus with this case.

The second judgment relied upon is the judgment of the Hon'ble Supreme Court in the case of *Shivdev Singh (supra)* with reference to para 10, the relevant portion of which reads as follows:-

"10. The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which, in effect, reviews his prior order. Learned counsel contends that Article 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution 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....."

Therefore, it is pleaded that the said judgment is applicable to the petitioners. However, we are unable to accept such a contention. The power that is being exercised by this Court in the present case is not under Article 226 of the Constitution. It is a power of review under Order XLVII Rule 1 of the C.P.C. The jurisdiction of the Court is determined by the statutory power under which the petition is filed. The instant petition is a petition filed under Order XLVII Rule 1 of the C.P.C. Therefore, the provisions of Article 226 of the Constitution of India cannot be imported into this order. Hence, we do not find that the said judgment is applicable to this case.

Further reliance is placed on the Division Bench judgment of this Court in the case of *Lakhanlal (supra)* to contend that the second review petition is maintainable.

We have considered the said judgment. The facts involved therein are quite different. The writ petition having been disposed off, a Miscellaneous Civil

Case No.817 of 2016 was filed. It was not a review application. It was an application seeking for modification and clarification. That miscellaneous civil case was dismissed. Thereafter, the instant review petition was filed. Therefore, the Division Bench was of the view that since the miscellaneous civil case was not filed under Order XLVII Rule 1 of the C.P.C., the review petition that was instantly filed, cannot be considered as a second review petition. The reason assigned is not far to find since the first petition was not a review petition but only an application seeking modification. In fact, not only the present petition but also the previous petitions were filed under Order XLVII Rule 1 of the Code of Civil Procedure. Therefore, even this judgment would not help the case of the petitioners.

Mrs. Shobha Menon, learned Senior Counsel further relies on Section 141 of the Code of Civil Procedure. The same reads as follows:-

"141. Miscellaneous proceedings. - The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

[Explanation. -- In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceedings under article 226 of the Constitution.]"

The proceedings in this matter have been initiated and contested under various provisions of the Code of Civil Procedure. Therefore, without going into the same, it is suffice to hold that if the contention of the petitioner is to be accepted with reference to Section 141 of the Code of Civil Procedure, then all the previous proceedings will be a nullity. Apparently, such a submission, therefore, cannot be accepted.

The provisions of Order XLVII Rule 9 of the Code of Civil Procedure

are quite clear. They read as follows:-

"9. Bar of certain applications.- No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained."

Therefore, a clear reading of the same would bar the second review application.

Hence, for all these reasons, the review petition being devoid of merit, is dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

psm



(VISHAL MISHRA)
JUDGE