

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

Case:- RP No. 88/2023
CM Nos. 3989/2023 & 4009/2023

1. Union Territory of Jammu & Kashmir Th. Petitioner(s)
Commissioner/Secretary to Govt.,
Housing & Urban Dev. Deptt.,
Civil Secretariat, Jammu/Srinagar;
2. Director, Urban Local Bodies,
Jammu;
3. Chief Executive Officer, Municipal
Council, Poonch;
4. Executive Engineer, Urban Local
Bodies Division-I;
5. President, Municipal Council
Poonch.

Through: Mr. S.S. Nanda, Sr. AAG.

Vs

1. Ram Rattan, S/o Sh. Dina Nath, R/o Respondent(s)
H.No. 111, Ward No. 8, Khorhinaar,
Tehsil Haveli, District Poonch;
2. Sanjeev Rishi, S/o Sh. Ram Parkash, R/o
H.No. 31(B), Sheesh Mahal, Tehsil
Haveli, District Poonch;
3. Ranjeet Singh, S/o S. Mohinder Singh,
R/o Village Kassalian, Ajote, Tehsil
Haveli, District Poonch;
4. Gurcharan Singh, S/o Kehar Singh, R/o
Ward No. 2, H. No. 272, Kamsar, Tehsil
Haveli, District Poonch.

...Respondents

5. District Development Commissioner,
Poonch.

...Proforma Respondent.

Through: Mr. Ashish Sharma, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
01.03.2024

(ORAL)

CM No. 3989/2023

Mr. Ashish Sharma, learned counsel for the non-applicants/respondents submits that he does not want to file objections to the instant application and that the delay in filing the Review Petition be condoned.

Heard learned counsel for the parties and perused the record.

For the reasons stated in the application, coupled with submissions made by the counsel for the parties, the application is allowed and delay of 147 days in filing the Review Petition is condoned.

Disposed of.

RP No. 88/2023

1. In the instant Revision Petition filed under Rule 65 of the J&K High Court Rules, 1999 (*hereinafter referred to as the 'Rules of 1999'*) read with Order 47 Rule 1 of the Code of Civil Procedure (*in short, the 'CPC'*), the petitioners herein seek review of judgment dated 27.12.2022 (*hereinafter referred to as the 'impugned judgment'*) passed in WP(C) No. 2456/2021 titled as, "*Ram Rattan and ors. Vs. UT of J&K and ors.*".

2. Before proceeding to advert to the grounds urged in the petition for seeking review of the impugned judgment, facts reveal that the petitioners (respondents herein) while maintaining the aforesaid WP(C) No. 2456/2021 before this Court stated that they had executed various works allotted to them by

the official respondents therein the petition to the tune of Rs. 44.35 lacs and during execution of the said works, the cost thereof got escalated to the tune of Rs. 88.83 lacs, for which a post-facto sanction came to be accorded by the official respondents and out of the said amount of Rs. 88.83 lacs, the respondents paid an amount of Rs. 44.35 lacs to the petitioners, however, did not pay the balance amount of Rs. 44.48 lacs, compelling the petitioners to approach this Court through the petition (supra), which came to be disposed of in terms of the judgment under review.

3. The petitioners in the instant Review Petition were impleaded as respondent Nos. 1, 2 & 4 to 6 in WP(C) No. 2456/2021 (supra), besides the District Development Commissioner, Poonch-proforma respondent 5 herein, who had filed his response to the petition and stated therein as follows:-

“That in reply to para 3-8 and grounds of the petition, it is submitted that the petitioners executed 14 Nos. of work in respect of Municipal Council Poonch under Constituency Development Fund of Ex- MLC, Sh. Yashpal Sharma with an estimated cost of Rs. 44.35 lacs, but the cost of the work exceeded amounting to Rs. 88.83 lacs. Out of which the funds amounting Rs. 44.25 lacs have been paid by the Municipal Council Poonch to the petitioners. The 14 Nos. of works have been completed in all respects as reported by the Municipal Council, Poonch. The tenure of Hon’ble Ex-MLC, Yashpal Sharma has ended, so the balance payments could not be made to the contractors. The post facto accord of Administrative Approval of 14 Nos. of works has already been accorded vide this Office Letter No. DDCP/CDF/2019-20/724-24 dated 25.06.2019. Moreover, the matter stands already taken up with the Director Urban Local Bodies, Jammu for release of payment to the tune of Rs. 44.48 lacs vide No. DDCP/MC/2021-22/3659-61 dated 14.08.2021. As and when funds are released, payments will be made to the petitioners (contractors).”

4. On the basis of the aforesaid stand taken by the respondent-District Development Commissioner, Poonch-proforma respondent 5 herein, the

petition came to be disposed of in presence of the counsel for the respondents including the present petitioners as well in the following manner:-

“Accordingly, the respondents shall consider effectively the release of the balance amount of Rs. 44.48 Lacs to the petitioners as and when the said amount is made available by respondent No. 2-Director, Urban Local Bodies, Jammu, who shall without any further delay and preferably within eight weeks from today make the funds available to respondent no. 4 for onward payment to the petitioners whereupon respondent no. 4 shall pay the said amount to the petitioners within four weeks along with an interest @ 6% per annum from the date the petitioners became entitled to the said amount till the date of its actual payment, in accordance with rules and regulations applicable and unless there is no other legal impediment thereto.

Disposed of.”

5. The petitioners herein have urged in the instant Review Petition the following grounds:-

- (a) *That the judgment and order dated 27.12.2022 is required to be reviewed on the ground that material fact that the petitioners herein have not accorded approval to either additional expenditure to the tune of Rs. 44.48 lac or the liability to pay the same to the respondents herein could not be brought to the notice of the Hon’ble Court, as the Hon’ble Court decided the writ petition only on the stand of the proforma respondent without giving sufficient opportunity to the petitioners to produce their stand. The order dated 27.12.2022 is required to be reviewed;*
- (b) *That the judgment and order dated 27.12.2022 is required to be reviewed on yet another ground that the proforma respondent placed on record a Communication dated 14.08.2021, whereby and whereunder the proforma respondent had requested to the petitioners herein to consider the work done liability so that payment could be made in favour of the contractors (respondents herein). However, the petitioners herein vide reply No. [DULBJ/P@S/2021/1183-85 dated 31.08.2021](#) disowned the said liability, but this Communication was not placed on the file by the proforma respondent. Since this document was not a part of the file, the Hon’ble Court relying on the Communication dated 14.08.2021 decided the writ petition. Hence, the order of the Hon’ble Court dated 27.12.2022 has been passed in absence of the important document-Communication dated 31.08.2021. The said Communication dated 31.08.2021 is important document and essential for the just decision of the case. Such order is not sustainable in the eyes of law and hence, deserves to be reviewed;*
- (c) *That the judgment/order is required to be reviewed on yet another ground, inasmuch as, the Hon’ble Court has not appreciated the fact that when the Revised Administrative Approval has been sanctioned by the proforma respondent himself, the petitioners cannot be made*

liable to release the funds. On this score also, the order dated 27.12.2022 deserves to be reviewed;

- (d) That the judgment/order dated 27.12.2022 is required to be reviewed on yet another ground, inasmuch as, the proforma respondent relied upon Communication dated 14.08.2021 and what happened after this Communication for the reply of the petitioners was essential, but without giving sufficient opportunity to the petitioners, the Hon'ble Court decided the writ petition on the basis of Communication dated 14.08.2021 only. The Hon'ble Court has erred in appreciating the fact that a mere Communication requesting the release of funds has been made the basis for determining of such big amount. Hence, to set the process on track and to regain the faith of common public, the order dated 27.12.2022 is required to be reviewed to the extent liability on petitioners herein may be omitted, as the proforma respondent has given approval to the revised cost on its own.'*

Heard learned counsel for the parties and perused the record.

6. Before proceeding further in the matter, it would be appropriate to refer to ambit and scope of the doctrine of review.

7. The normal rule of law is that once a judgment is pronounced or an order is made, the Court becomes *functus officio*, i.e., ceases to have control over the matter and the judgment or order pronounced and made becomes final and cannot be altered, modified, varied or changed, however, the review of a judgment or order is an exception to this general rule and the doctrine can be invoked and allowed in certain circumstances and on certain grounds only.

A right of review, in law, has been held to be both substantive and procedural and as a matter of procedure, every Court can correct an inadvertent or unintentional error, which has crept in the judgment or order either due to the procedural defect or mathematical and clerical error or by misrepresentation or fraud of a party to the proceedings, however, the power of review vested in a

Court is not inherent power and has to be conferred on a Court either expressly or by necessary implication.

A reference herein to the following judgments of the Apex Court pertaining to the review would be relevant. In “*Inderchand Jain Vs. Motilal*, reported in 2009 (14) SCC 663”, following has been provided:-

“(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.”

In “*Lily Thomas Vs. Union of India*, reported in 2000(6) SCC 224”, 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.”

In “*Shri Ram Sahu (Dead) through LRs and others vs. Vinod Kumar Rawar*, reported in *2020 Online SC 896*”, following has been noticed and held:-

“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 self evident 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, the grounds on which the petitioners have sought the review of the impugned judgment are that no approval have had been accorded to the additional expenditure of Rs. 44.48 lacs by them for the works executed by the petitioners-respondents herein and that the said position could not be brought to the notice of the Court, as the petition came to be decided only

on the stand of the proforma respondent 5 herein without giving sufficient opportunity to the petitioners herein to produce their stand.

Insofar as the aforesaid plea urged by the petitioners is concerned, record would tend to show that no such plea has been raised by the petitioners herein either by filing a response to the petition or else during the hearing of the petition on the date of its disposal, as counsel for the petitioners herein being respondents before the writ Court was present, so much so, the stand taken by the respondent No. 3 in the writ petition-proforma respondent 5 herein, upon which the writ petition came to be disposed of was neither disputed either by filing an independent reply or else by making oral submissions by the learned counsel for the petitioners herein during the hearing of the matter till its disposal.

9. The next ground urged in the instant Review Petition by the petitioners herein is that the respondent No. 3-proforma respondent 5 herein had placed on record a Communication dated 14.08.2021, whereunder the said respondent had made a request to the petitioners herein to consider the work done liability of the writ petitioners, so that the payment could be made in favour of the writ petitioners and in response to the said letter, the petitioners herein had disowned the liability in terms of the letter dated 31.08.2021 and that the said letter was not placed on file by the said respondent No. 3.

The aforesaid plea raised by the petitioners herein cannot be entertained in the instant Review Petition on the same premise, on which the aforesaid first ground urged by the petitioners for review of the judgment came to be rejected, however, risking writ petition, it is reiterated that the petitioners

herein though were present and represented by counsel in the writ petition, did neither object to the stand taken by the respondent No. 3 in the petition nor did produce the aforesaid letter dated 31.08.2021. Thus, the instant ground urged for review of the judgment is not entertainable, in that, the petitioners herein, in essence, seek re-hearing of the petition which, in law is not permissible, under the guise of review.

10. The next ground urged in the instant Review petition is that the Court did not appreciate the fact that when the Revised Administrative Approval had been sanctioned by the respondent No. 3-proforma respondent 5 herein himself, the petitioners could not have been made liable to release the funds for meeting the liability of the writ petitions. This ground as well urged by the petitioners herein, in essence, amounts to re-opening of the issue settled in the writ petition in presence of the fact that the petitioners herein were present before the writ Court being well represented by their counsel and voluntarily did not bring any such fact into the notice of the Court. The ground, thus, also is rejected.

11. The last ground urged in the instant Review Petition is that the respondent No. 3 in the writ petition-proforma respondent 5 herein had relied upon a Communication dated 14.08.2021 and did not bring into the notice of the Court the facts having happened thereafter and that the Court did not provide an opportunity to the petitioners herein and on the basis of the said Communication of the respondent No. 3-proforma respondent 5 herein, decided the writ petition having erred in appreciating that a mere Communication requesting release of funds has been made the basis of determining the financial liability, which error

involves financial implication of a huge amount. The instant ground urged by the petitioners as well, in essence, amounts to re-hearing of the writ petition under the guise of the instant review petition and same is impermissible. Hence, the ground urged is rejected as well.

12. Having regard to the principles of law laid down by the Apex Court in the judgments (supra), inasmuch as the aforesaid analysis, the judgment under review does not call for any interference in the instant Review Petition. Resultantly, the petition fails and is **dismissed**, alongwith connected application.

(Javed Iqbal Wani)
Judge

Jammu
01.03.2024
Ram Krishan

Whether the order is speaking? Yes
Whether the order is reportable? Yes