Form No. HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT, MULTAN BENCH, MULTAN

JUDICIAL DEPARTMENT

Review Application No.24-C of 2011
In
R.F.A. No.116 of 2011

Manzoor Ahmad Paracha and others
VERSUS
Habib Bank Limited and others

Sr. No. of Order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary

15.10.2015 Mr. Tariq Zulfiqar Ahmad Choudhry, Advocate for the petitioners
Mr. Muhammad Masood Sabir, Advocate for the respondents

The facts which culminated in filing of this review petition are as such that father of the present petitioners namely Dur Muhammad Paracha, Proprietor Paracha Export availed finance facility from Habib Bank Limited, Husain Agahi Branch, Multan but he failed to adjust his liability. Habib Bank Limited instituted a suit for recovery of Rs.131,577.90 in the Court of learned Addl. District Judge, Multan on 06.04.1974 against said Dur Muhammad Paracha, which was later on transferred to the Judge Banking Court, Lahore and then to Judge Banking Court No.1, Multan. Due to economic position of the party, the bank wrote-off outstanding amount against Dur Muhammad Paracha, father of the present petitioners and suit of the bank was accordingly disposed

off by learned Judge Banking Court No.1, Multan. During pendency of these proceedings, Dur Muhammad Paracha expired.

2. The present petitioners being daughters and sons of Dur Muhammad Paracha instituted a suit for recovery of damages on the basis of malicious prosecution against the Bank, which was dismissed by the learned Judge Banking Court No.1, Multan under Order VII, Rule 11 of the C.P.C. on 16.06.2004, against which the present petitioners preferred an appeal vide FAO No.143/2004 in the High Court, which was also dismissed on 29.11.2006.

3. The present petitioners, instead of approaching to higher forum, again instituted suit for recovery of damages before the learned Civil Judge Ist Class, Multan, who rejected the plaint of the petitioners vide judgment and decree dated 19.04.2011; against which the petitioners brought appeal vide RFA No.116 of 2011 before this Court, but same was ultimately dismissed vide order dated 02.05.2011, which has been sought to be reviewed by filing the instant review petition.

4. Learned counsel for the petitioner has argued that the learned Judge while passing the impugned order dated 02.05.2011 failed to consider the true aspects of the case and failed to construe the factum that the petitioners, after death of their father, were arrayed as defendants being Dur Muhammad Paracha's legal heirs and they had suffered a lot in pursuing the proceedings, so no question of abatement arises, but even then the petitioner's appeal was dismissed in limine,

which resulted into miscarriage of justice. The learned Civil Judge wrongly accepted the application of the respondents/defendants on the plea of abatement whereas such like application was earlier dismissed by the learned trial Court on 10.05.2010, thus, on the same subject second application was not maintainable, all this was not considered by the learned Judge while passing the impugned order and in a haste wrongly dismissed the appeal of the petitioners. It was also not considered while passing the impugned order that suit was dismissed on statement of the representative of the bank that nothing was due against the petitioners, so the cause of action was well available to them to institute suit for recovery of damages on the basis of malicious prosecution. Learned Judge mistook the abatement when after the death of petitioners' father, they were wrongly dragged in litigation for 10 years, the cause of action was well available to them. Impugned order is result of wrong exercise of jurisdiction and law on the subject has been misconstrued, rather defiled; therefore, by reviewing the order dated 02.05.2011, the same may be declared illegal, null and void, against the rights of the petitioners; same may be set aside and appeal of the petitioners may be treated as pending. Relies on *Muhammad Akram v. Mst. Farman Bi* **(PLD 1990 Supreme Court 28)**, *Sikandar Abdul Karim v. State* **(PLJ 1998 SC 1356)**, *Ali Muhammad Mirza and others v. Mst. Sardaran and others* **(PLD 2004 Supreme Court 185)**, *Land Acquisition Officer and Assistant Commissioner, Hyderabad v. Gul Muhammad through Legal Heirs* **(PLD 2005 Supreme Court 311)** and *Muhammad*

Ibrahim v. Irshad Begum and 7 others **(2006 MLD 924-Lahore)**.

5. Nay-saying the above submissions, the learned counsel appearing on behalf of the respondents by favouring the impugned order has prayed for dismissal of the instant review petition.

6. We have heard the arguments advanced before us and have gone through the record with able assistance of learned counsel for the parties.

7. In order to ascertain as to whether this is a fit case for exercising the powers for review, it will be appropriate to peruse the principles of law with regard to review power.

In the case of *Smti Meera Bhanja vs. Smti Nirmala Kumari (Choudhury)*, reported in **AIR 1995 SC 455** it was observed:

> *"The limits to exercise the power of review is limited, Review Court not to act as appellate court."*

In the above cited case, it was further observed that:-

> *"The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the persons seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be*

> *exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court."*

8. In addition to the above, in order to appreciate the scope of a review, section 114 of the C.P.C. has to be read, but this section does not even insinuate or 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 XLVII of the C.P.C. and for the purposes of this lis, permit the aggrieved person 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 postulates 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 in Rule 1 of the Order XLVII of the C.P.C. 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. In *M/s Thungabhadra Industries Ltd. (in all the Appeals) v. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur* **(AIR 1964 SC 1372)**, it was held:-

> *"There 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 characterized 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 states one in the face and there could reasonably by no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."*

In **Meera Bhanja** case *ibid* it was held that:-

> *"It is well settled law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, CCPC. ……."*

9. From the above scenario, it is manifestly clear that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of record or any other sufficient reason; but in the case in hand, there appears no such situation to review the impugned order, rather the petitioner, if aggrieved, has ample opportunity to approach the higher forum in order to get his grievance redressed. In this regard further reliance can be placed on *Daewoo Corporation v. Zila Council, Jhang and 2 others* **(2004 SCMR 1213)**, wherein it has been held:-

> *"It is well-settled by now that "a review petition is not competent where neither any new and important matter or evidence has been discovered nor is any mistake or error apparent on the face of the record. Such error may be an error of fact or of law but it must be self-evident and floating on surface and not requiring any elaborate discussion or process of ratiocination". Master Tahilram v. Lilaram 1970 SCMR 622, Abdul Khaliq Qureshi v. Chief Settlement and Rehabilitation Commissioner 1968 SCMR 800, Rehmatullah v. Abdul Majid 1968 SCMR 838, Hassan Din v. Claims Commissioner, Lahore 1968 1047 (2),*

> *Qamar Din v. Maula Bukhsh 1968 SCMR 1042(1), Muhammad Akram v. State 1970 SCMR 418 and Nawab Bibi v. Hamida Begum 1968 SCMR 104. There is no cavil with the proposition that "if judgment or finding, although suffering from an erroneous assumption of facts, is sustainable on other grounds available on record, review is not justifiable notwithstanding error being apparent on the face of the record". Zulfiqar Ali Bhutto v. State* ***1979 SCMR 427****."*

In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* **(AIR 1979 SC 1047)** it was held that:-

> *"It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC 1909) there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the*

> *order was made, it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court."*

The following observations in connection with an error apparent on the face of the record in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tiruymale* **(AIR 1960 SC 137)** were also noted:-

> *"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."*

Even in *Parsion Devi v. Sumiri Devi* **(1997(8) SCC 715)**, relying upon the judgments in the cases of Aribam's

(*supra*) and Smt. Meera Bhanja (*supra*) it was observed as under:

> *"Under Order XLVII, 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 XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, Rule 1, CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise."*

10. Now when we weigh the facts and circumstances of the case in hand on the above standard it appears that there is no new evidence or any matter, which could not be produced at the stage of passing of impugned order or any error apparent on the face of the record, which could be cured by reviewing the impugned order, because this Court cannot sit as a Court of appeal, as the scope of review is limited. Findings on facts may be erroneous, but the petitioners have efficacious remedy of knocking the door of higher forum, which cannot be dealt with in exercise of review jurisdiction.

11. Manifestly, the suit was filed against Dur Muhammad Paracha by the bank, who died during the

proceedings and the representative of the bank made statement that nothing was due against the present petitioners, the suit was rightly disposed of being abated and said observation was upheld through the impugned order, which may be erroneous, but cannot be reviewed in view of the above discussion.

12. For the foregoing reasons, the case law relied upon by the learned counsel for the applicants/ petitioners, with utmost respect, has no relevance to the matter in hand; therefore, it does not render any assistance or help to the applicants/petitioners.

13. In the light of the above discussions, we are of the considered opinion that, though the grounds cited by the review petitioners may possibly be taken in an appeal, the same cannot be basis for a review petition.

14. Therefore, we find no sufficient merit in this review petition, and accordingly, by placing reliance on the judgments *supra* as well as on *Parsion Devi and other v. Sumitri Devi and others* **(1997) 8 Supreme Court Cases 715** and *Muhammad Khaliq (decd.) through Legal Heirs v. Gul Afzal Khan and others* **(PLD 2015 Supreme Court 247**), wherein it has been held that, *'Laws such as the law relating to review or other laws such the Civil Procedure Code, 1908, or the Limitation Act, 1908 etc. had a rationale---Such laws were always made for the furtherance of the collective public good and if individuals suffered because of such laws, it was but a natural and logical consequence of protecting the larger public good for the purpose of bringing an end to litigation particularly through review*

petitions, which were frivolous.', the same is dismissed. No order as to cost.

(Mushtaq Ahmad Tarar) Judge **(Shahid Bilal Hassan)** Judge

M.A.Hassan

Approved for reporting.

Judge