

PETITIONER:
PARSION DEVI & ORS.

Vs.

RESPONDENT:
SUMITRI DEVI & ORS.

DATE OF JUDGMENT: 14/10/1997

BENCH:
A.S. ANAND, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal by special leave calls in question an order passed by a single judge (G.D. Sharma, J.) of the High Court of Jammu & Kashmir on 6.3.1997 in exercise of the review jurisdiction under order 47 Rule 1 CPC. The learned Judge 'upset' the findings recorded on April 25, 1989 in Civil Revision No. 87 of 1987 by another single judge (K.K. Gupta, J.) of that Court.

Shorn of details, brief facts necessary for disposal for this appeal are that on November 28, 1977 a suit, filed by the appellants, was decreed and an injunction was issued to the defendant-respondents to close down the passage carved out by opening a door from the wall and further the defendants were restrained from using that passage. On August 7, 1986 an application for execution of the decree was filed in the Executing Court on the ground that the injunction were being violated. The judgement debtor filed objections to the Execution Application and raised a preliminary objection to the effect that the Execution Application was barred by time. The Executing Court vide order dated May 6, 1987 upheld the preliminary objection and held the Execution Application to be barred by time. The matter was taken up in revision to the High Court. On 25.4.1989, the Civil Revision Petition against the order of Execution Court was allowed. Gupta, J. allowing the civil revision petition held that the case was covered by Article 181 of the Jammu & Kashmir Limitation Act and the opinion of the Executing Court that it was covered by Article 182 of the J & K Limitation Act was by time. It was held that the petition was not barred Executing Court for decision on merits. A review petition came to for decision on merits. A review petition came to be filed by the judgment debtors and on 6.3.1997 the review petition was allowed by sharma. J. and the order dated 25.4.1989 was set at naught and that of the Executing Court dated 6.5.1987 restored.

Mr. Ranjit Kumar, learned counsel appearing for the appellant submitted that the impugned order is vitiated as it transgresses the powers of review available to the Court under Order 47 Rule 1 CPC. He submitted that the review petition had been treated as if it was an appeal. He also

referred to the grounds of the review application and urged that on none of those grounds was the review of the order dated 25.4.1989 justified.

Mr. M.L. Bhat, learned senior counsel appearing for the respondents, on the other hand submitted that the Review Court had only set right the mistake committed by Gupta, J. by correct interpretation of the decree and the Act to the facts of the case and that exercise could not rightly with. He asserted that sharma, J. had rightly set aside the order of Gupta, J. dated 25.4.1989 and upheld the order of the Executing Court dated 6.5.1987.

We have given our thoughtful consideration to the respective submissions raised at the Bar.

A perusal of the application filed by the judgment debtors seeking review of the order dated 25.4.1989 shows that none of the grounds stated therein can strictly speaking be said to fall within the ambit and scope of Order 47 Rule 1 CPC. The review petition in effect challenged the correctness of the order of Gupta, J. on the question of limitation without pointing out any "error apparent on the face of the record" which could have been reviewed. Sharma, J. appears to have ignored the limits of the exercise of jurisdiction under Order 47 Rule 1 CPC while passing the impugned order and reversing the order of Gupta, J. on merits.

It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh* (1965 (5) SCR 174 at 186) this Court opined:

"What, however, we are not concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion that Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinct which is real, though it might not always be capable of exposition between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent." A review is by no means an appeal in disguise whereby an erroneous decision is reheard corrected. but lies only for patent error."

(Emphasis ours)

Again, in *Smt. Meera Bhanjia Vs. Smt. Nirmala Kumari Choudhury* (1995 (1) SCC 170) while quoting with approval a passage from *Abhiram Taleswar Sharma Vs. Abhiram Pishak Sharma & Ors.* (1979 (4) SCC 389), this Court once again held that review proceedings are not by way of an appeal and have to strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

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 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". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."

Considered in the light of this settled position we find that Sharma, J. clearly over-stepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article the scope of Order 47 Rule 1 CPC. 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 later only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997.

As a consequence of the setting aside of the impugned order, the remand order made by Gupta, J. would automatically stand revived but that in our opinion also does not solve the problem.

We find that neither the executing court nor Gupta, J. while deciding the Civil Revision petition have recorded any finding as to the date or the time when the decree was allegedly breached. That was an essential fact to be determined before it could be considered whether Article 181 or Article 182 of the Limitation Act would apply to the facts and circumstances of the case. Therefore, with a view to do complete justice between the parties, it appears appropriate to us to direct that the Executing Court shall, while deciding the Executing Application on merits also consider this aspect and return a finding as to when the cause of action accrued to the decree holder and the consider the question as to which Article of the Limitation Act applies to the facts of the case, uninfluenced by any observation made by Gupta, J. or Sharma, J. in their orders. This question would be considered, not as a preliminary objection, but alongwith all other issues on merits. The Executing Court shall dispose of the execution application on merits in accordance with law expeditiously. The appeal

is accordingly allowed but with no order as to costs.

JUDIS