W/R

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Review/Decree/TA/3376/2013/Hanumangarh

1- Mst. Dhanni w/o Jamnaram Caste Mali, r/o Nohar, Dist. Hanumangarh.
2- Mst. Meera w/o Hariram d/o Jamnaram, Caste Mali, r/o Mohalla Agoona, Churu.

……. Petitioners.

Versus

1- Municipality, Nohar, Dist. Hanumangarh
2- State Government.
3- Mst. Dakhi w/o Shivnarain, Caste Mali, r/o Nohar, Dist. Hanumangarh.

-------- Non-petitioners

Division Bench
Shri Moolchand Meena, Member
Shri Mohd. Hanif, Member

Present:-
Mr. R. S. Barar, Counsel for the petitioners.
Mr. Shashikant Joshi, Counsel for the petitioners.
Mr. Dunichand, Counsel for Non-petitioner No.1.
Mr. Hagami Lal Chaudhary, Deputy Government Advocate.

Decision

Dated:- 19-11-2013

1- This review petition under Section 229 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') has been filed by the petitioners aggrieved by decision dated 09-05-2013 passed by Division Bench of this Board in appeal No.TA/Decree/3060/2004, whereby decision dated 29-12-1989 passed by the Revenue Appellate Authority, Sriganganagr was set aside and the suit was remanded to the Trial Court for afresh decision.

2- Brief facts of the case leading to this review petition are that one Shivnarain s/o Gangajal filed a suit for declaration of rights under Rajasthan Tenancy Act, 1955 in the Court of

Assistant Collector, Nohar (Trial Court). The plaintiff Shivnarain was forefather of present petitioners and husband of non-petitioner No.3 Mst. Dakhi. It was averred in the suit mainly, that disputed land bearing old khasra No.845 measuring to 69 Bighas 9 Biswas had been under continuous cultivatory possession of the plaintiff Shivnarain since Samvat 2009. Present khasra No.138 area 13 Bigha 5 Biswa is part of that old khasra No.845, which has been recorded in gair khatedari of the plaintiff, whereas it should have been recorded in khatedari of the plaintiff. It was requested that the suit be decreed and disputed land khasra No.138 area 13 Bigha 5 Biswa be recorded in khatedari of the plaintiff.

3- The Trial Court decreed the suit vide it decision dated 22-03-1985. The State Government, through Tehsildar filed a review petition in the Trial Court against decision dated 22-03-1985, which was accepted by the Trial Court. The decision and decree dated 22-03-1985 was set aside and the suit was dismissed vide decision dated 01-03-1986. Aggrieved by Trial Court's decision dated 01-03-1986, the present petitioners and non-petitioner No.3, who are decedents of the plaintiff Shivnarain, filed an appeal in the Court of Revenue Appellate Authority, Sriganganagar (First Appellate Court), which was accepted by the First Appellate Court vide its decision dated 29-12-1998. The decision dated 01-03-1986 of the Trial Court was set aside and earlier decision dated 22-03-1985 of the Trial Court was restored.

4- Aggrieved by this decision dated 29-12-1998 of the First Appellate Court, the Municipality Nohar, present non-petitioner No.1 filed second appeal with an application under section 5 of the Limitation Act, and an application under section 96 of the Civil Procedure Code, 1908, before this Board. The Division Bench of the Board, vide its impugned decision dated 09-05-2013 allowed the appeal, dismissed the decision dated 29-12-1998 of the First Appellate Court and remanded the case to the Trial Court with directions that Municipality, Nohar be impleaded in the suit and it be decided afresh on merits after affording proper opportunity to be heard.

5- Aggrieved by this decision dated 09-05-2013 of the Division Bench of this Board, the petitioners have filed the present review petition.

6- We have heard arguments of learned counsels of both the sides.

7- The learned counsels for the petitioners, emphasizing on the grounds mentioned in the review petition, have submitted:-

(1) That present non-petitioner/Municipality, Nohar was a third party, who had filed the appeal in the Board with an application under section 5 of the Limitation Act and also an application under section 96 of Civil Procedure Code, 1908. The present petitioners/respondents had filed reply to those applications, and had stated that appellant / Municipality, Nohar had no locus to file the appeal against decision dated 29-12-1998 of the First Appellate Court. The Municipality, Nohar is neither aggrieved party nor it has any right in the disputed land. The disputed land has never been in the khatedari of the Municipality or Mandi Samiti either on the date of the suit or earlier to it.

(2) That application under section 5 of the limitation Act was submitted by the Municipality, Nohar on false grounds. It was mentioned that they came to know about the decision dated 29-12-1989 through Shri Pawan Kumar, a clerk of the Municipality on 01-07-2004, whereas an application for attested copy of the decision was submitted on behalf of the Mandi Samiti, Nohar on 28-04-1989 and again on 31-03-1999. The Municipality, Nohar claims that they had got title of the disputed land from the Mandi Samiti. The respondent/plaintiff had mentioned this fact in its reply to the application under section 5 of the Limitation Act, but this important fact was ignored by the learned Division Bench. The learned counsel has contended that the Municipality, Nohar did not come to the Court with clean hands, and its application for condonation of delay was liable to be rejected, but the Division Bench has committed an error in accepting the application.

(3) That the Trial Court, vide its decision dated 01-03-1986 had set aside its earlier decision dated 22-03-1985. Consequent to this later decision, status of revenue record should have been restored to its status prior to decision dated 22-03-1985. But the Tehsildar, vide mutation No.14 dated 14-03-1986, unlawfully recorded the disputed land in revenue records as 'Mandi Area Government Land' i.e मण्डी ऐरिया (आराजी राज), which was an unauthorized and unlawful entry. It was contended that non-petitioner No.1 Municipality, Nohar could not get any title or right over the disputed land in the garb of such an unauthorized and unlawful act of the Tehsildar. The learned Division Bench of the Board, while passing decision dated 09-05-2013 ignored this legal position, which is an error apparent from the face of record.

(4) It has also been argued by the learned counsels for the petitioners that, the Division Bench of the Board, while accepting application under section 96 of the Code of 1908, has observed in para 13 of the impugned decision that the disputed land is of ownership (मिल्कियत) of the Municipality, Nohar. This finding of the Board regarding ownership of the land will be binding on the Trial Court. Thus the Board indirectly has decided the case on merits. But at the same time, it has remanded the case to the Trial Court. This is also an apparent error on the part of the learned Division Bench.

(5) It has been argued on behalf of the petitioners that the Division Bench has ignored documents available in the file of the Trial Court and has held that the disputed land is of Municipality's ownership land. The Division Bench has also given its final conclusion that another land was given to the petitioner in exchange in lieu of the disputed land. This finding of the Division Bench is against the documentary evidence available in the file, which is an error apparent from the face of record. It has also been submitted that after recording such a final conclusion, there was no justification in remanding the case to the Trial Court.

(6) Finally, both the learned counsels for the petitioners have requested that the review petition be accepted, decision

dated 09-05-2013 passed by the Division Bench be set aside, the appeal filed by the Municipality, Nohar be dismissed and decision dated 29-12-1998 of the First Appellate Court be upheld.

8- The learned counsel for the non-petitioner No.1 Municipality, Nohar has argued that scope of review petition is very limited and there is no error in the impugned decision which can be said to be an error apparent from the face of record. Another land was allotted to the petitioner in exchange of the disputed land, and the Division Bench of the Board has categorically concluded on this issue. It has been submitted that the disputed land was allotted to the Municipality. Nohar by Government Notification and for this reason present non-petitioner Municipality, Nohar is an aggrieved party from the decision dated 29-12-1998 passed by the First Appellate Court. So learned Division Bench has rightly entertained second appeal filed by the Municipality, Nohar. Further, the learned counsel for non-petitioner No.1 submits that the Division Bench has simply remanded the case to the trial court, and such a decision is prejudice to none of the parties. During re-trial in the Trial Court, both the parties would get better opportunity to plead their case. So there is no scope for interfering in the Division Bench's decision dated 09-05-2013.

9- The Deputy Government Advocate Shri Hagami Lal Chaudhary, appearing on behalf of State Government, has endorsed the arguments advanced by the learned counsel for the non-petitioner No.1.

10- We have given a thoughtful consideration to the rival submissions made by learned counsels for the parties and we have also gone through the record of the case available on the file.

11- The most important issue for deciding review is whether the decision dated 09-05-2013 passed by the Division Bench of the Board suffers from any such error or mistake, which comes under the scanner of section 229 of the Act of

1955 or Order 47 Rule 1 of the Civil Procedure Code, 1908. Both these Sections / provisions are as under:-

Section 229 of the Rajasthan Tenancy Act, 1955:

"229. Power of review by Board and other revenue courts.- *Subject to the provisions of Code of Civil Procedure 1908 (Central Act V of 1908)-*

(1) The Board of its own or on the application of a party to a suit or proceeding, may review and may rescind, alter or confirm any decree or order made by itself or by any of its members; and

(2) every revenue court, other than the Board, shall be competent to review any decree, order or judgment passed by such court."

Order47 Rule 1 of the Civil Procedure Code, 1908

"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.

(2) A party who is not appealing from a decree on order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to

the Appellate Court the case on which he applies for the review.

***Explanation**-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."*

12- Since, section 229 of the Act of 1955 does not provide for grounds of review, provisions of Order 47 Rule 1 of the CPC are followed in this regard, as provided under section 208 of the Act of 1955. In view of said order 47 Rule 1, grounds for reviewing a decision may be as under:-

(a) If there is a discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge or could not be produced by the party seeking review, at the time when the decree was passed or order made.

(b) If there is some mistake or error apparent from the face of the record or any other sufficient reason.

13- The petitioner in the present case does not plead for discovery of any new and important matter or evidence. He pleads that there is an error apparent from the face of record in the decision dated 09-05-2013. So we have to examine the petitioner's case from this point of view whether there is any such mistake or error in the decision by the Division Bench, which can be construed to be an error apparent from the face of record.

14- The learned counsels for the petitioners have vehemently argued that the Division Bench has allowed application under section 5 of the Limitation Act and also application under section 96 of the Civil Procedure Code, 1908, without any sufficient cause and satisfactory reason. The Municipality, Nohar had submitted application for condoning the delay on false ground and it was not even an aggrieved party too. The learned counsels have placed reliance on AIR 2003 SC 1989, AIR 2003 SC 1989, AIR 1976 Allahabad 121, AIR 1984 Gujarat 18, 2012 (2) DNJ (Raj.) 1082, and 2011

WLC (Raj) UC 122 in support of his arguments. We have gone through the Division Bench's impugned decision meticulously to examine this objection of the petitioners. The Division Bench of the Board, in its decision dated 09-05-2013, has discussed both the applications filed by the appellant/present non-petitioner Municipality, Nohar, and after recording speaking reasons, those applications have been accepted and allowed. Thus decision, by the Division Bench on both these applications is a considered decision. Without going into the merits for accepting those applications, we are of the view that a decision with consideration cannot be subject matter of review proceedings.

15- Another argument, on which the learned have emphasized, is that recording the disputed land in the name of Mandi Area as मण्डी ऐरिया (आराजी राज), is an unauthorized and unlawful entry. The Trial Court, vide its decision dated 01-03-1986 had set aside its earlier decision dated 22-03-1985. Consequent to this decision, status of revenue record should have been restored to its status prior to decision dated 22-03-1985. It was contended that it is an error apparent from the face of record. We have gone through the decision impugned meticulously and it is evident that the Division Bench has not given any finding on this point whether it was correct or not to record the land in the name of Mandi Samiti or Municipality. On the basis of records available in the Trial Court's file before the Division Bench, it has been simply observed that the land was in the name of Mandi Samiti and not in the name of State Government. The control of the Mandi Samiti has been handed over to the Municipality, and on this account apparently disputed land seems to be in the ownership of the Municipality. So Municipality, being a necessary party in the litigation, is entitled to be heard by the Trial Court before deciding the suit. With this observation, the case has been remanded to the Trial Court. This observation of the learned Division Bench of the Board finds support from the findings recorded by the Trial Court itself in its decision dated 01-03-1986, vide which earlier decision dated 22-03-85 was reviewed and set aside. It has been discussed and concluded in decision dated 01-03-86 that-

"अब हम प्रार्थी द्वारा प्रस्तुत दस्तावेजात का अवलोकन करते हैं। प्रार्थी ने नकल फर्द अहकाम दिनांक 30–6–62 ता 25–6–63, NT नोहर व आदेश ACC व DCC हनूमानगढ, नकल फर्दअहकाम DCC हनूमानगढ दिनांक 1–10–56, नकल जमाबन्दी चक 1 NHRA सम्वत 2034, नकल जमाबन्दी चक 4 BKK सम्वत 2041, नकल खतौनी कोलोनाइजेशन चक 1 NHRA व नकल खतौनी 4 BKK पेश की। प्रार्थी का कथन है कि वादी अप्रार्थी की पुख्ता भूमि नये खसरा नम्बर 146/14 में 41 बीघा 10 बिस्वा थी– जिसमें से 19 बीघा 17 बिस्वा भूमि मण्डी नोहर में अवाप्त हो गयी– तथा लगभग 22 बीघा भूमि की एवज में उसे 1 NHRA में 22 किला भूमि शिफ्टिंग में DCC हनूमानगढ के आदेश से दे दी गयी– तथा जो भूमि 19 बीघा 17 बिस्वा मण्डी में ली गयी– उसकी एवज में अप्रार्थी प्रतिवादी (?) को चक 4 BKK में 13 किला भूमि DCC हनूमानगढ के आदेश से दे दी गयी– इसकी पुष्टि कोलोनाइजेशन की जमाबन्दी से होती है– इस प्रकार अब वादी अप्रार्थी की कोई भूमि पुराने ख.नं. 845/14 की रोही मोजा नोहर में नहीं रहती है। ख. नं. 138 रकबा 13 बीघा 5 बिस्वा मोजा रोही नोहर में वादी अप्रार्थी का कोई title नहीं है– अपितु यह जमीन अब सिवायचक है।

वादी अप्रार्थी ने इन तथ्यों का बहस में खण्डन नहीं किया – तथा न ही ऐसे दस्तावेज पेश किये जो यह बताते कि वादी अप्रार्थी का ख.नं. 138 रकबा 13 बीघा 5 बिस्वा रोही मौजा नोहर में कोई हक हकूक है।

इस प्रकार प्रार्थी प्रतिवादी द्वारा प्रस्तुत नये तथ्यों से जो पहले उसके पास में नहीं थे, यह सिद्ध होता है कि वादी अप्रार्थी का खसरा नम्बर 138 रकबा 13 बीघा 5 बिस्वा में कोई हक हकूक नहीं था– वह इसके बदले में सरकार से 4 BKK में भूमि ले चुका है। अतः वादी के पक्ष में जो निर्णय दिनांक 22–3–85 को किया गया– वह गलत है। ...."

This decision dated 01-03-86 was available in the file before the Division Bench, and thus there was sufficient ground for the conclusions drawn by the Division Bench in its decision dated 09-05-2013 that the respondents/present petitioners had got land in replacement of the disputed land and the disputed land belongs to the Mandi Samiti and Municipality. Even then, the Division Bench has not given its final decision on this point and it has remanded the case to the Trial Court with directions to implead the appellant/Municipality, Nohar as defendant and

to decide the case afresh after affording opportunity for hearing. In our opinion, such a remand order is perfectly in accordance with natural principles of justice, as the Municipality was not heard either by the Trial Court or by the First Appellate Court, inspite of the fact that the disputed land stood transferred to Mandi Samiti/ Municipality as observed in Trial Court's decision dated 01-03-86. So, in our opinion, objection raised by the learned counsel for the petitioners, in this regard, is without any base and it cannot be sustained in review proceedings.

16- As discussed in para 15 hereinabove, the Trial Court, on the basis of concrete revenue record, had observed in its decision dated 01-03-1986, that the disputed land has been transferred to Mandi Samiti, which was lateron handed over to Municipality, Nohar, so the order of the Division Bench to remand the case to Trial Court itself was justified, so that after hearing all concerned parties the Trial Court may decide that why the disputed land was not recorded in gair khatedari of the petitioner? The petitioner, rather than coming in review, should appear before the Trial Court and should plead his case as to why the disputed land should have been recorded in his gair khatedari? We find no justification in the petitioner's argument that the Division Bench has ignored this issue. Apart from it, there is a notification dated 12-09-2002 in the appeal file before the Division Bench, which reveals that 9 Mandi Samitis, including Nohar Mandi Samiti, were transferred to concerned Municipalities. As already occurred in the decision dated 01-03-1986 by the Trial Court, the disputed land was transferred to Mandi Samiti, Nohar and another land was given in exchange to the petitioners. Therefore, there seems to be some reason why the disputed land was not recorded in gair khatedari of the petitioner after the decision dated 01-03-1986. However this issue can be decided only after hearing all the parties at Trial Court's level. So decision of the Division Bench is justified.

17- It has also been argued by the learned counsels for the petitioners that, the Division Bench of the Board has given its findings about ownership (मिल्कियत) of the disputed land in favour of Municipality, Nohar; and thus the Board indirectly

has decided the case on merits. At the same time, the Division Bench has remanded the case to the Trial Court. This is also an apparent error on the part of the learned Division Bench. It has also been submitted that after recording such final conclusion about ownership of the disputed land, there was no justification in remanding the case to the Trial Court. We are of the opinion that learned Division Bench in its decision dated 09-05-2013 has given a simple observation on the basis of record available in the file for justifying their decision to allow application under section 96 of Civil Procedure Code, 1908. However, this issue would be decided by the Trial Court after hearing all the concerned parties.

18- It has been argued on behalf of the petitioners that the Division Bench has ignored documents available in the file of the Trial Court and has given findings against the documentary evidence, which is an error apparent from the face of record. The authority of **AIR 2006 SC 75 (case of Rajendra Singh Versus Lt. Governor, Andaman & Nicobar Islands and others)** has been relied upon in this regard, wherein it has been held that if an order has been passed without deciding many important issues and by not considering of relevant documents, then it is a clear case of an error apparent on the face of record. But in the present case, as already discussed by us, the decision of the learned Division Bench is based on documents available in the Trial Court's file, especially on documents referred to in decision dated 01-03-1986 by the Trial Court.

19- The learned counsels for the petitioners have kept reliance on **AIR 2005 SC 592 (case of Board of Control for Cricket, India and another versus Netaji Cricket Club and others),** wherein it has been held that an application under Order 47 Rule 1 of the Civil Procedure Code, 1908, for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but an application for review would also be maintainable if there exists a sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47 Rule 1 of the CPC is wide enough to

include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*". In view of this authority there must be either some error apparent from the face of record, or some mistake or some other sufficient reason. In the present case as discussed in foregoing paras, impugned decision dated 09-05-2-13 is a well considered decision and it is not on account of a mistake or error on the part of the Division Bench. So this authority is also not applicable in the present case. So far as 'some other sufficient reason' is concerned, this phrase has been interpreted in **Chhajju Ram vs. Neki, AIR 1922 PC 112** and approved by the Hon'ble Supreme Court in **Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulose Athanasius & Ors., (1955) 1 SCR 520,** to mean "a reason sufficient on grounds at least analogous to those specified in the rule". Meaning thereby any other sufficient reason should also be at par with or analogous to some mistake or error apparent on the face of record.

20- To understand the concept of 'an error apparent from the face of record,' and scope of review, we deem it proper to refer to Smt. Meera Bhanja's case decided by the Hon'ble Supreme Court. The Hon'ble Apex Court in the case of **Smt. Meera Bhanja (AIR 1995 SC 455)** has held in para 8, as under:-

> *"It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1, CPC. In connection with the limitation of the powers of the Court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of* ***Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, AIR 1979 SC 1047,*** *speaking through Chinappa Reddy, J., has made the following pertinent observations (para 3):*
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> > *"It is true there is nothing in Article 226 of the Constitution of to preclude the 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. 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 or 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."*

Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of ***Satyanarain Laxminarain Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137,*** *wherein, K. C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:*

> *"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 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."

The basic principles, laid down by the Hon'ble Apex Court in the pronouncement cited as above, can be summarized as under:-

(a) That the review proceedings are not a by-way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Civil Procedure Code, 1908.

(b) 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 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.

(c) It has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. 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 on the face of the record.

21- The Hon'ble High Court for Rajasthan in **2005 RBJ (12) page 290**, has held as under:-

> *"The scope of review is very limited. It has been clearly held in a catena of cases that a judgment order may be open to review under Order 47 Rule 1 CPC 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 process of reasoning can hardly be said to be an error apparent on the face of record justifying exercise of power of review. In exercise of jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be re-heard and corrected. There is clearly distinction between 'an erroneous decision' and 'an error apparent on the face of the record.' While the former can be corrected by higher forum, the latter can be corrected by exercise of review jurisdiction. A review petition has, therefore, a limited purpose and can not be allowed to be an appeal in disguise."*

22- In the **case of Surendra Kumar Vakil (2005 (1) RRT 545)**, the Hon'ble Supreme Court has held that even an erroneous view taken on a particular issue, cannot be a ground for review:-

> *"A point that has been heard and decided cannot form a ground for review even if assuming that the view taken in the judgment under review is erroneous."*

23- The latest view of the Hon'ble Supreme Court in the matter of review, finds place in the **case of Union of India Sandur Maganese & Iron Ores Ltd. And Ors** decided on 23-04-2013 and reported at **2013 STPL (Web) 351 SC**. Para 22 to 24 of the above decision dated 23-04-2013 are reproduced as under:-

> *"22. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In **Parsion Devi & Ors. vs. Sumitri Devi & Ors., (1997) 8 SCC 715**, this Court held as under:-*

> *"9. 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 I 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 a limited purpose and cannot be allowed to be "an appeal in disguise".*
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> *23. This Court, on numerous occasions, had deliberated upon the very same issue, arriving at the conclusion that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC.*
>
> *24. In the present case, the error contemplated in the impugned judgment is not one which is apparent on the face of the record rather the dispute is wholly founded on the point of interpretation and applicability of Section 11(2) and 11(4) of the MMDR Act. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same.* ***As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction. Hence, in review jurisdiction, the court shall interfere only when there is a glaring omission or patent mistake or when a grave error has crept in the impugned judgment, which we fail to notice in the present case."***

24- Thus, it has been categorically held by the Hon'ble Supreme Court and the High Court in above authorities that **an error in the decision, which is not apparent but which has to be detected and proved through a long process of legal as well factual arguments, cannot be said to be an error apparent on the face of record. It is also a well settled principle of law that *'an erroneous decision'* and *'an error apparent on the face of record'* are different from each other**

and there are different sets of legal provisions for dealing with both the things. If the decision suffers from 'an error apparent on the face of record', it can be corrected in review proceedings but if the decision is erroneous or is based on erroneous view taken by the Court on some documents, facts, evidence or law; it cannot be corrected in review proceedings.

25- The learned counsel for the petitioner has submitted 1993 Supp (4) SCC page 595, and has argued that a decision passed on erroneous assumption or against the record and evidence available on the file, it can be corrected in review. In the case of **S. Nagaraj & others versus State of Karnatka & another reported in 1993 Supp (4) SCC page 595** has observed as under:-

> *"Entire concept of writ jurisdiction exercised by the higher courts is funded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice, then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. ---------- ---------- Rectification of an order stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. Apart from Order XL Rule 1 of the Supreme Court Rules, the Supreme Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for the sake of justice."*

Thus the Hon'ble Supreme Court in the above authority has discussed writ jurisdiction of the Apex Court and inherent powers of the Hon'ble Supreme Court under Order XL Rule 1 of the Supreme Court Rules, which cannot be applied in the present case. We are f the opinion that powers of the courts

to review a decision, under Order 47 of Civil Procedure Code, 1908 are not akin to writ jurisdiction vested with the Hon'ble Supreme Court or Hon'ble High Court. However, in this case also, the basic principle laid down by the Hon'ble Supreme Court is that *If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice, then it cannot on any principle be precluded from rectifying the error.* In our view this principle is analogous to the principle laid down by the Apex Court in Smt. Meera Bhanja's case (supra) and other authorities discussed hereinabove, that, **if the decision suffers from an error apparent on the face of record or has been passed on account of a mistake in understanding the facts and law, it can be corrected in review proceedings. But, as discussed already, the decision dated 09-05-2013 passed by the Division Bench of the Board is not a decision by mistake, but it is a decision based on well considered opinion. So the authority relied upon by the learned counsel for the petitioner does not help his case.**

26- In view of detailed discussions held in para 11 to 25, hereinabove, we are unable to find any mistake in the impugned decision dated 09-05-2013 which can be construed to be an error apparent on the face of the record. This Court is of the considered view that the impugned decision does not suffer from any error apparent on the face of record, nor any new and important matter or evidence has been put forth by the petitioners, which was not produced by him at the time when the appeal was heard and decided. The facts and grounds mentioned in the review petition are regarding merits of the case, which have been considered by the Division Bench at the time of impugned decision. Even if, for the sake of arguments, the decision dated 09-05-2013 is an erroneous decision from the petitioner's point of view, review is not a proper remedy for him. It is a settled position of law that there is difference between a decision by mistake and an erroneous decision. Only a decision by mistake can be reviewed. An erroneous decision can be subjected to an appeal or writ, but it can not be a subject of review proceedings. Further appeal or writ is the only

treatment for erroneous decisions. Review proceedings cannot take place of an appeal or a writ.

27- On account of conclusions recorded in foregoing paras, this Court is of considered opinion that review petition in hand is forceless and deserves to be dismissed.

28- Resultantly, the present review petition is hereby dismissed.

Pronounced in the open Court.

(Mohd. Hanif)
Member

(Moolchand Meena)
Member