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# AN ANALYSIS OF POWERS OF REVIEW AND REVISION VESTED IN COURTS UNDER CODE OF CIVIL PROCEDURE, 1908

## A Meaning of Review and Revision -Layman Language:

- 1 Review means a decision, which was passed by a Court, is reconsidered by the same court.
- 2 The main object of Review is the acceptance of human fallibility i.e. even court can make mistakes, while passing a judgment and the same should be rectified in the interest of justice.
- 3 Revision, on the other hand, means a decision, which was passed by a lower court, is subject to re-examination or re-consideration by a higher court.
- 4 The main object of Revision is to prevent subordinate courts from acting arbitrarily or illegally in the exercise of their jurisdiction.
- 5 Review is done by the court which passed the decree or made the order whereas revision is executed only by the High Court.

## B Legislative Framework with regard to Review under the Code of Civil Procedure, 1908 (for short "CPC"):

- 1 The law of Review of a decision is governed by Section 114 of CPC read with Order 47 Rule 1 of CPC
- 2 Section 114 of the CPC provides for a substantive power of review by a civil court.
- 3 Section 114 of the CPC although does not prescribe any limitation on the power of the court to review, but such limitations have been provided for in Order 47 Rule 1 of the CPC.
- 4 Section 114 of CPC provides for persons who may file an application for review under CPC, if the person is aggrieved by:
  - An order or a decree from which an appeal is allowed by CPC but no appeal has been preferred.
  - An order or decree from which no appeal is allowed by CPC
  - A decision on a reference from a Court of Small Causes.
- 5 Order 47 Rule 1 provides for grounds under which an application for Review can be filed:
  - Discovery of new and important matter or evidence which after due diligence was not in the knowledge of

the aggrieved person or could not be produced by him at the time when the decree was passed or order made or

- 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.
- 6 Order 47 Rule 2 provides that a party not resorting to the right of appeal, may apply for a review of the order.
  - 7 The right of review is still available when an appeal is pending by the other party on the same order.
  - 8 However, when the ground of appeal and review is common to the applicant and the appellant, the applicant can present his case for review to the Appellate Court.
  - 9 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.
  - 10 An order of the Court rejecting the application for review shall not be appealable under Order 47 Rule 7.
  - 11 Under Article 124 of the Limitation Act, 1963 a review can be filed within 30 days from the date of decree or order.
- ## C Legislative Framework with regard to Revision under CPC:
- 1 The law of Revision is governed by Section 115 of CPC.
  - 2 The power of Revision is vested in the High Court.
  - 3 The extent of revisional jurisdiction is defined by the statute conferring such jurisdiction.
  - 4 The conferment of revisional jurisdiction is generally for the purpose of keeping tribunals subordinate to the revising tribunal within the bounds of their authority to make them act according to the procedure established by law and according to well defined principles of justice.



**Neha Maniktala**

Associate, MCO Legals  
B.B.A., LLB  
Symbiosis Law School  
Noida

## Expertise:

Corporate/Commercial Arbitration

✉ [neha.m@mcolegals.co.in](mailto:neha.m@mcolegals.co.in)

<sup>5</sup> The following conditions must be satisfied before Revision Jurisdiction is exercised by the High Court:

- A case must have been decided
  - The court which decided must be subordinate to the High Court.
  - The order should not be an appealable one
  - The subordinate court must have:
    - Exercised Jurisdiction not vested in it by law
    - Failed to exercise the jurisdiction vested in it
    - Acted in exercise of jurisdiction illegally or with material irregularity.
- <sup>6</sup> Any person aggrieved by an order of a court subordinate to High Court may file a revision against such order. But the High Court can suo motu exercise revisional jurisdiction under Section 114 of CPC.
- <sup>7</sup> The period of filing a revision application is 90 days from the order of the subordinate court.

#### **D Power of Revision under Article 227 of the Constitution of India:**

- <sup>1</sup> Under Art. 227, the High Court has power of superintendence over all Courts and Tribunals in the territory with respect to which it exercises jurisdiction, this power of superintendence is both judicial and administrative.
- <sup>2</sup> In the case of *Thakur Jugar Kishore Sinha vs. Sitamarhi Central Co-operative Bank*, AIR 1967 SC 1494, the Supreme Court held the jurisdiction Article 227 is of a wider ambit; it does not limit the jurisdiction of the High Court to the hierarchy of courts functioning directly under it under CPC or CrPC; but it gives the High Court power to correct errors of various kinds of all courts and tribunals in appropriate cases.

#### **E Judicial Interpretation of Review:**

- <sup>1</sup> In the case of *Lily Thomas vs Union of India*, AIR 2000 SC 1650, the Supreme Court held that the scope of an application for review is much more restricted than an appeal. The Supreme Court held that:
- The meaning of the word ‘review’ is the act of looking after something again with a view of correction or improvement. It cannot be denied that the review is the creation of a statute.
  - The power of review could only be exercised within the limits of the statute dealing with the exercise of such power.
  - The review cannot be treated like an appeal in disguise.
  - The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained
- <sup>2</sup> In the case of *Ashrafi Devi vs. State of UP & Ors.* Civil Appeal No. 5217 of 2010, the Supreme Court held:
- It is a settled law that every error whether factual or legal cannot be made subject matter of review under Order 47 Rule 1 of the Code though it can be made subject matter of appeal arising out of such order.
  - In other words, in order to attract the provisions of Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case.
- <sup>3</sup> In the case of *Indian Performing Rights Society vs. Entertainment India Limited*, I.A. No. 3509/2010 the Delhi High Court held that:
- It is trite law that while exercising its powers under Section 114 read with Order 47 Rule 1, of CPC, the Court's jurisdiction is narrow and confined.
  - Re-appreciation of new points of arguments or questions of law are excluded from the scrutiny of the Court in valid exercise of review jurisdiction
- <sup>4</sup> In the case of *Union of India vs. Sandur Manganese*, (2013)8SCC337, the Supreme Court has interpreted discovery of new evidence as one of the grounds for review:

- Discovery of new important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the Petitioner or could not be produced by him.
- <sup>5</sup> In the case of *State of West Bengal vs. Kamal Sengupta*, (2008)8SCC 612 the Supreme Court held on the discovery of new evidence as follows:
- Where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment
  - In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae.
  - Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

#### **F Judicial Interpretation of Revision:**

- <sup>1</sup> In the case of *ITI Limited vs. M/s Siemens Public Communication Network Limited*, AIR 2002 SC 2308 the Supreme Court held:
- For the effective exercise of High Court's superintending and visitorial powers over subordinate courts, the revisional jurisdiction has been conferred on the High Court under section 115 of CPC.
  - The powers given are clearly limited to the keeping of the subordinate courts within the bounds of their jurisdiction
- <sup>2</sup> In the case of *Kasturi Radhakrishnan vs. M. Chinnian*, AIR 2016 SC 609 the Supreme Court held:
- The High Court while exercising revisional jurisdiction cannot interfere with the findings of fact recorded by the first appellate Court because on re-appreciation of the evidence, its view is different from the Court/authority below.
  - A finding of fact recorded by Court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law.

#### **G Conclusion:**

- <sup>1</sup> The concept of Review is based on human error. A judge can make an error in the course of his duties as well. Review means when the court re-examines the decisions made by itself.
- <sup>2</sup> Revision on the other hand is reconsidering the decision made by a lower authority by a higher authority to rectify mistakes such as jurisdictional error.
- <sup>3</sup> The major differences between Review and Revision can be summarized as follows:
- Review is given by the court which passed the decree or made the order whereas revision is executed only by the High Court.
  - Review can be done only after the passing of the order whereas revision can be done when the case has been decided.
  - The decree granting a review is appealable whereas the decree granting a revision is not appealable.
  - The grounds for review are the discovery of new evidence, error on the face of the record and any other sufficient reason however the ground for revision is a jurisdictional error by the lower courts.