2025:CGHC:2682

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

REVP No. 35 of 2024

1 - M/s Dubey Stone Crushers Through Its Proprietor Heeramani Dubey S/o Shri Ramkumar Dubey, Aged About 46 Years R/o Village Chhatona, Tahsil Bilha, District Bilaspur (C.G.)

--- Petitioner

versus

1 - Chhattisgarh State Power Distribution Company Limited (C.G.) Through Its Managing Director, Chhattisgarh State Power Distribution Company Limited, Daganiya, Raipur (C.G.)

2 - Superintending Engineer (O And M) (Bilaspur Circle) Chhattisgarh State Power Distribution Company Limited, Bilaspur (C.G.)

3 - Executive Engineer (O And M) Bilaspur Division, Chhattisgarh State Power Distribution Company Limited, District Bilaspur (C.G.)

…...Respondents

For Petitioner : Mr. Amit Soni, Advocate
For Respondents : Ms. Astha Shukla, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order On Board

16/01/2025

1. Petitioner has filed this review petition seeking review of the order passed by this Court in WPC No.3985 of 2023 dated 11.09.2023 inter-alia on the ground pleaded therein.

2. Learned counsel for petitioner would submit that against the order passed in the writ petition, petitioner has filed writ appeal bearing W.A. No.448 of 2023 and during the course of arguments, writ appeal was permitted to be withdrawn with liberty to file review application considering the ground raised that this Court has not considered the point of limitation taken and raised before this Court. He contended that Regulation 30 which is extracted in para -8 of the order dated 11.09.2023 specifically mentions the review application to be filed within a period of 30 days of the order. He also pointed out that specific ground is also raised in the writ petition in Para 8.5. He contended that though there is specific pleading in para 8.5, this Court while deciding this writ petition escaped consideration of the important ground of limitation raised for consideration and further that respondents have not filed any application for condonation of delay along with the application for review before the authority. As the application for review was barred by limitation, therefore, there is error apparent on the face of order passed in writ petition. Hence, the application be allowed.

3. Learned counsel for respondents opposes the submission of learned counsel for review petitioner and would submit that arguments raised by learned counsel for petitioner in the review petition has been discussed in Para-2 and 3 of the impugned order. In the said order, in the arguments there is no discussion with respect to the ground of limitation raised by learned counsel for petitioner at the time of oral argument raised before this Court while arguing in the writ petition. Hence, the review is not permissible on the new ground and review cannot be entertained as an appeal. She also submits that from the

argument considered by this Court and mentioned in para 2 and 3 of the order impugned, there is no mention even if the pleadings is there in the writ petition with respect to the ground of limitation if not pressed.

4. I have heard learned counsel for parties, perused the pleadings made in the writ petition, and the arguments raised by learned counsel for petitioner and respondents, order passed in the writ petition and further the ground taken by learned counsel for petitioner in the writ appeal from the copy of writ appeal placed by learned counsel for petitioner before this Court for perusal.

5. Perusal of writ petition would show that in para 8.5 of writ petition it is mentioned that “It is pertinent to mention here that even no application for condonation of delay has been filed by respondents while preferring review application”. There is no pleading in ground that review petition is barred by limitation and could not have been considered on merits. The ground to challenge the order impugned in the writ petition is raised in para -9, in which there is no specific ground raised by the writ petitioner with respect to the limitation as it is being raised in the review petition. The arguments, which was advanced by both the sides, before this Court while hearing writ petition has been written in para 2, 3 & 4 of the order impugned. From the contents of the para 2 & 3 of the order passed in writ petition dated 11.09.2023 it is reflecting that during the course of arguments counsel for writ petitioner has not raised the ground that review application was barred by limitation and no application for condonation of delay is filed. Perusal of the ground raised in the writ appeal which is filed

immediately after passing of the impugned order in the writ petition also does not specifically mention that ground of limitation is argued at the time of hearing of the writ petition, before the writ Court but writ Court has not considered that arguments while passing the impugned order.

6. In absence of arguments as mentioned in the para 2 and 3 of the order passed in writ petition as also considering the writ appeal where no such ground is raised, submission of learned counsel for petitioner that ground of limitation is not considered in the opinion of this Court cannot be considered in this review proceedings.

7. Review petition cannot be entertained on any new grounds. Only consideration in the review petition while exercising review jurisdiction is that whether there is any error apparent on the face of order or not. The law is well settled by Hon'ble Supreme Court that all the pleadings made in the writ petition and the grounds raised, unless and until it is argued during the course of making oral submission before the Court is not always required to be considered. Submission made by learned counsel for respective parties during the course of hearing arguments before the Court is required to be considered and discussed in the order.

8. Hon'ble Supreme Court in case of **Amanullah v. State of U.P., (1973) 2 SCC 81** has observed thus :

> **"8.** Normally it has to be presumed that all the arguments actually pressed at the hearing in the High Court were noticed and appropriately dealt with and if the judgment of the High Court does not contain discussion on a point, then that point should be assumed prima facie not to have been

argued at the bar, unless the contrary is satisfactorily shown. No doubt, in the grounds of appeal in this Court it is pleaded in so many words that the High Court ought to have held that Ram Pyar specifically mentioned in the dying declaration was a different person and impersonator called Shyam Pyar came forward to oblige the prosecution. But it is nowhere stated that this point was actually argued in the High Court but not dealt with by it in the judgment. In the absence of such an assertion capable of acceptance by this Court, we have no option but to hold that this point was presumably not argued in the High Court. Having not been pressed in the High Court, in the absence of special reasons, this Court would normally feel disinclined to permit it to be raised on appeal by special leave under Article 136 of the Constitution. New points may be permitted to be raised by this Court only in exceptional circumstances when they go to the root of the matter and the larger interests of justice demand it. However, as the learned counsel for the appellant has actually taken us through the material on the record and we have heard arguments of both sides, we would not exclude this point from our consideration but would pronounce upon it. After fully considering the matter, we feel little hesitation in agreeing with the line of reasoning and the conclusion of the trial court. There is no serious infirmity and there is certainly no failure of justice. Both the courts have taken the view that Ram Pyar had been wrongly mentioned in the FIR and it was really Shyam Pyar who was a witness to the occurrence. There is no cogent ground for differing with this view."

9. The Hon'ble Supreme Court in case of **French Motor Car Co. Ltd., Calcutta Vs. Their Employees, (1961) 2 LLJ 180** has observed thus :

"3. In considering this contention it is necessary first to see whether this argument was urged before the Tribunal

below. The tribunal's award makes no mention of any such argument. It is not stated in the petition for special leave that this was pressed before the Tribunal and still it was not considered. The mere fact therefore that in the written statement of the company it had been mentioned that as the issue about the gratuity had been considered by the First Engineering Tribunal and had been rejected by it and that wages and conditions of service fixed by the earlier awards should not be revised unless it could be proved that there had been change of circumstances subsequent thereto, we cannot assume that this contention was pressed at the time of hearing. On a fair reading of the Tribunal's award we are bound to hold that the main contention pressed was that in view of the financial prospects of the company, gratuity-scheme should not be introduced in addition to the provident fund. The question that in view of the previous tribunal having rejected the claim the present tribunal ought not to direct payment of gratuity in addition to provident fund in view of this Court's authority would be such an important argument that if it had been raised the Tribunal, it is reasonable to think, would have dealt with it. We are convinced on a fair reading of the award that this question, though raised faintly in the written-statement was ultimately not pressed. No fault can therefore be found with the Tribunal for not considering this question whether there had been such changes since the date of the previous award as to justify a departure from the previous decision. Nor can we allow the appellant to raise this question before us when it was not urged at the hearing."

10. The Hon'ble Supreme Court in case of **Transmission Corpn. of A.P. Ltd. v. P. Surya Bhagavan, (2003) 6 SCC 353** has observed thus :

"10. Question as to whether the respondent was overaged for entry into the service was neither raised in

> the written statement nor was it argued before the High Court. Under the circumstances the appellant cannot be permitted to raise this point for the first time in this Court. The second point regarding the delay in filing the petition though was raised in the written statement, but, it seems the same was not pressed before the Bench at the time of arguments. It has not been stated in the grounds of appeal that this point was raised and argued before the Bench during the course of arguments and the Bench had failed to notice the same. In view of this we decline to go into this question as well."

11. It is well settled in law that in the guise of review, rehearing is not permissible. In order to seek review it has to be demonstrated that order suffers from error apparent on the face of record. The scope of review is very limited and an order or judgment is open to review only if there is a mistake or an error apparent on the face of record. Hon'ble Supreme Court in case of **Smt. Meera Bhanja vs Smt. Nirmala Kumari Choudhury** reported in **AIR 1995 SC 455** has observed thus :

> "**8.** 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* [(1979) 4 SCC 389 : AIR 1979 SC 1047] , speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)
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> > "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

> 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."

12. In the case of **Asharfi Devi (dead) through LRs Vs. State of Uttar Pradesh and Ors.** reported in **(2019) 5 SCC 86**, it was held thus:-

> "18. 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."

13. It is also not the case of the petitioner that he discovered any new and important matter, which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the order under review. After

considering the documents available in record as well as the arguments advanced by both the parties, the order under review was passed.

14. Considering the grounds raised by petitioner in this review petition and taking into consideration aforementioned rulings of Hon'ble Supreme Court and limited jurisdiction of this Court, this Court is of considered view that review petitioner failed to point any error apparent on the face of record warranting review of the order dated 11.09.2023.

15. Accordingly, review petition being sans merit is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Balram