

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CM No.916/2023

in

RP No.14/2023

MST. HALEEMA & ORS. ...PETITIONER(S)

Through:- Mr. Shabir Ahmad Budoo, Advocate.

Vs.

MST. DILSHADA & ORS. ...RESPONDENT(S)

Through:- None.

CORAM:- HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE.

ORDER(ORAL)

14-03-2023

CM No.916/2023

For the reasons stated in the application, the delay in filing the review petition is condoned and the main review petition is taken on board for its disposal on merits.

CM disposed of.

RP No.14/2023:

1) Through the medium of instant review petition, the petitioners are seeking review of judgment dated 23.12.2022 passed by this Court whereby Civil First Appeal filed by the petitioners against the judgment and decree passed by the learned Additional District Judge, Srinagar, has been dismissed.

2) It has been contended in the review petition that while passing the judgment under review, this Court has not considered the statement of Notary Public, Mr. Abdul Hameed Dar, who, according to the petitioners, has not confirmed the contents of the document which was subject matter of appeal. It has been also contended that this Court has not properly appreciated the statement of defendant No.1. It is also contended that the document of oral gift has not been proved and this Court has not taken into consideration this aspect of the matter. It is further contended that the document of oral gift has not been properly interpreted nor the evidence on record has been properly appreciated by this Court. It has also been contended that issue No.4 has not been properly framed by the trial court and it has escaped the notice of this Court also while deciding the appeal.

3) Heard and considered.

4) Before dealing with the contentions raised by the petitioners, it would be apt to notice the law relating to scope of review.

5) Rule 65 of the Jammu & Kashmir and Ladakh High Court Rules, 1999 deals with power of the High Court to review its judgments. It reads as under:

“65. Application for review of judgment- The Court may review its judgment or order but no application for review shall be entertained except on the ground mentioned in order XLVII Rule 1 of the Code.”

6) From a perusal of the aforesaid provision, it is clear that a plea for review of a judgment can be entertained only on the grounds

mentioned in Order XLVII Rule 1 of the Code of Civil Procedure. Here it would be apt to quote the provisions contained in Order XLVII Rule 1 of the CPC, which reads as under:

“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 an 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 or 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 review of such judgment.] ”

7) From a perusal of the aforesaid provision, it is clear that review of a judgment can be made only when it is shown by the aggrieved

person that a new and important matter and evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him, has been discovered or if there is some mistake or error apparent on the face of record or for any other sufficient reason which has to be a reason analogous to the first two reasons.

8) Coming to the contentions raised in the instant review petition, it is clear that the review petitioners intend that this Court should re-appreciate the evidence led by the parties before the trial court. If we have a look at the grounds of review projected in the instant petition, the petitions have throughout pleaded and contended that this Court has not properly appreciated the statements of the witnesses recorded before the trial court.

9) I am afraid the scope of review cannot be extended to re-appreciation of the evidence led by the parties before the trial court nor can this Court, in exercise of its power of review, sit over its own judgment regarding interpretation of a document.

10) The petitioners, it appears, are under the garb of filing the instant petition, trying to persuade this Court to entertain Second Appeal against the judgment passed by the trial court, which is impermissible in law. Under the guise of review petition, the petitioners have tried to persuade this Court to re-hear the issues that have already been decided.

11) I am of the firm opinion that even if it is assumed that the view taken by this Court on any point or any issue is not correct, the same

cannot be a ground for review of the judgment, though it may be a ground for appeal. An erroneous view of law is not a ground for review and a Court cannot rehear and correct an erroneous judgment by way of a review.

12) For the foregoing reasons, I do not find any merit in this review petition. The same is, accordingly, dismissed.

(SANJAY DHAR)
JUDGE

SRINAGAR
14.03.2023
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

