In the High Court At Calcutta
Civil Revisional Jurisdiction
Appellate Side

RVW 85 of 2016
CO 4228 of 2012
Rita Dey Chowdhury nee Nandy
-vs.-
Dr. Kalyan Dey Chowdhury

Coram	:	The Hon'ble Justice Arijit Banerjee
For the Petitioner	:	Mr. Amit Prokash Lahiri, Adv. Mr. Shuvro Prokash Lahiri, Adv.
For the Respondent	:	Mr. Sadananda Ganguly, Adv. Mr. Mohinoor Rahaman, Adv. Mr. Shahan Shah, Adv. Mr. Sk. Abumusa, Adv.
Heard On	:	20.04.2016, 19.05.2016, 10.06.2016
CAV On	:	10.06.2016
Judgment On	:	15.09.2016

Arijit Banerjee, J.:

(1) This is an application for review of an order dated 2 February, 2015 passed in C.O. 4228 of 2012 (Rita Dey Chowdhury-vs.-Kalyan Dey Chowdhury).

(2) While disposing of Matrimonial Suit No. 533 of 2003, the Learned Trial Judge had passed an order of alimony in favour of the petitioner to the tune of Rs. 4,500/- per month. From time to time, such amount was increased to Rs. 8,000/-. Thereafter, the petitioner applied under Sec. 25(2) of the Hindu Marriage Act, 1955 praying for further enhancement of alimony amount. Initially, the petitioner had prayed

for increase of the amount to Rs. 16,000/- but subsequently by way of amendment she prayed for Rs. 23,000/- per month towards her alimony and cost of maintenance of the only son born out of the wedlock between the petitioner and the respondent. The Learned Trial Court enhanced the alimony to Rs. 12,000/- per month. Being aggrieved, the petitioner approached this court by way of an application under Art. 227 of the Constitution being C.O. 4228 of 2012.

(3) The said revisional application was disposed of by this court by the order dated 2 February, 2015 which is under review in the present application. It was recorded in the said order that the respondent was willing to pay Rs. 15,000/- per month. In the premises, this court was of the view that it would not cause undue hardship to the respondent if he was directed to pay Rs. 16,000/- per month to the petitioner and accordingly such an order was made.

(4) Being aggrieved, the petitioner filed a Special Leave Petition wherein, on 7 September, 2015, the Apex Court passed the following order:-

> *"We have perused the Impugned Order. Priam facie, it does not contain any reasoning by which the Court came to a conclusion that the amount of maintenance of Rs. 16,000/- would be adequate and proper. It seems to be based almost entirely on a statement made by the Respondent-Husband that he was willing to pay to Rs. 15,000/-. The matter may therefore have to be remanded.*

Issue notice returnable in two weeks."

(5) On 22 February, 2016 the Hon'ble Apex Court disposed of the Special Leave Petition by passing the following order:-

> *"The learned Counsel for the petitioner seeks leave to withdraw this Special Leave Petition with liberty to approach the High Court in a Review Petition.*
> *Permission is granted with the above liberty.*
> *The Special Leave Petition is, accordingly, disposed of as withdrawn."*

(6) Pursuant to the liberty granted by the Apex Court the petitioner has filed the instant review petition.

(7) The main ground urged by Learned Counsel for the petitioner as will also appear from the memorandum of review is that the correct principles of law were not followed by this Court in computing the maintenance amount to which the petitioner is entitled. Learned Counsel submitted that commensurate with the status and income of the respondent, the standard of living enjoyed by the petitioner while she and the respondent were together and considering the expenses involved in bringing up the only son of the parties hereto who resides with the petitioner, the maintenance amount should have been much higher than Rs. 16,000/- per month. It was submitted that the amount should be in the region of 1/3rd of the respondent's income. The petitioner has annexed to her supplementary affidavit affirmed on 17 March, 2016, a salary statement pertaining to the respondent issued by

the employer of the respondent. It appears from such statement that the respondent, as Assistant Professor, Department of General Medicines, Malda Medical College, enjoyed a gross salary of Rs. 1,00,122/- for the month of January, 2015. After deducting GPF (Rs. 24,000/-), GI (Rs. 80/-), P. Tax (Rs. 200/-) and Income Tax (Rs. 12,000/-), the income came to Rs. 63,842/-. The petitioner has also annexed a salary statement of the respondent for the month of February, 2016 which has been prepared by the petitioner herself which shows the respondent's net salary as Rs. 95,527/- without, however, deducting Provident Fund contribution amount.

(8) It was submitted that the petitioner was ousted from her matrimonial home about 15 years ago. The respondent filed for divorce in 2003 and the marriage was dissolved by decree of Court in 2012. For more than 15 years the petitioner is residing with her parents. The only son of the parties also resides with the petitioner. He is 19 years old and is a student.

(9) Learned Counsel for the petitioner relied on a Supreme Court decision in the case of **Dr. Kulbhushan Kunwar-vs.-Smt. Raj Kumari, AIR 1971 SC 234**, wherein the Apex Court upheld that High Court's order fixing maintenance at 25 per cent of the net income of the husband as found by the Income Tax Department in the assessment

proceedings under the Income Tax Act. He also relied on a decision of a Division Bench of this Court in the case of **Chitra Sengupta-vs.-Dhruba Jyoti Sengupta, AIR 1988 Cal 98**, wherein the Division Bench of this Court after referring to earlier authorities held that the quantum of maintenance would depend on various factors such as the ability of the respondent, needs of the wife, the social status, age, education, and other requirements. The Court would have regard to the position and the status of the parties. The expression 'income sufficient for her support' in Sec. 24 of the Hindu Marriage Act, 1955 would not mean only such amount as would be sufficient for the wife to eke out her existence at the subsistence level, but would cover such amount as would be necessary for the necessaries suited to the status and station which the wife would have enjoyed as the wife of the respondent husband. Learned Counsel then referred to **Jasbir Kaur Sehgal-vs.-District Judge, Dehradun, (1997) 7 SCC 7**, in which the Apex Court observed that no set formula can be laid down for fixing the amount of maintenance. Some scope for leverage can always be there. The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or

deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband. Mr. Lahiri then relied on a decision of the Apex Court in the case of **U. Sree-vs.-U. Srinivas, (2013) 2 SCC 114**, wherein the Apex Court reiterated the above principles and further observed that it is the duty of the court to see that the wife lives with dignity and comfort and not in penury. The living need not be luxurious but at the same time she should not be left to live in discomfort. The court has to act with pragmatic sensibility to such an issue so that the wife does not meet with any kind of man-made misfortune. In **Bhuwan Mohan Singh-vs.-Meena, AIR 2014 SC 2875**, while discussing the object and scope of Sec. 125 of the Code of Criminal Procedure, the Apex Court observed that the concept of sustenance does not mean to lead a life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play. It is the obligation of the husband to see that the wife does not become a destitute. It is the sacrosanct duty of the husband to render financial support even if he is required to earn money with physical

labour, if he is able bodied. The Hon'ble Supreme Court referred to its earlier decision in **Kirtikant D. Vadodaria-vs.-State of Gujarat, (1996) 4 SCC 479**, wherein it was observed that the provisions in Sec. 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Sec. 125 are intended to achieve this special purpose. The dominant purpose behind this benevolent provision is that the wife, child and parents should not be left in a helpless state of distress, destitute and starvation. Learned Counsel then referred to a decision of the Patna High Court in the case of **Indu Dhari Singh-vs.-Rita Singh, 1997 (1) BLJR 133**, in support of his submission that the deduction of contribution towards the provident fund is not permissible for arriving at net income of the husband for the purpose of fixing the quantum of maintenance. The Patna High Court held that the provident fund contribution enures to the benefit of the husband himself in the future and hence the same cannot be deducted to arrive at his net income.

(10) Appearing on behalf of the respondent, Mr. Ganguly, Learned Senior Counsel, submitted that although the Hon'ble Supreme Court granted liberty to the petitioner to file review petition, the same must be within the scope of O. 47 R. 1 of the CPC. He submitted that none of the grounds for review as mentioned in O. 47 R. 1 is available to the

petitioner in the present case. He referred to O. 20 R. 3 of the CPC which provides that a judgment shall be dated and signed by the Judge in open court at the time of pronouncing it and, once signed shall not afterwards be altered or added to, save as provided by Sec. 152 or on review. Sec. 152 of the CPC provides that clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. Neither Sec. 152 nor O. 47 R. 1 of the CPC applies to the facts of the case, submitted Mr. Ganguly.

(11) Learned Senior Counsel referred to the case of **Lily Thomas-vs.-Union of India, AIR 2000 SC 1650**, wherein the Hon'ble Apex Court observed that the dictionary meaning of the word 'review' is an act of looking, offering something afresh with a view to correction or improvement. Review is the creation of statute. The power of review can be exercised for correction of a mistake and not to substitute a view. Such power can be exercised within the limits of the statute dealing with the exercise of power. Review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. The Hon'ble Apex Court further held that an error contemplated under O. 47 R. 1 CPC must be such which is

apparent on the face of the record and not an error which is to be fished out and searched. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. It must be a patent error and not merely a wrong decision.

Learned Counsel then relied on **Parsion Devi-vs.-Sumitri Devi, (1997) 8 SCC 715**, and in particular on paragraphs 9 and 10 thereof which are set out hereunder:-

> *"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 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."*
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> *10. 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."

He then referred to a decision of the Learned Single Judge of this Court in **Tarapada Dey-vs.-Amitava Dey, 2009 (3) CHN 798**, wherein the Learned Judge referred to Hon'ble Supreme Court's decision in **Parsion Devi (supra)**, and reiterated that the court sitting in review jurisdiction, does not have the competence to rehear the matter *de novo* since that would amount to committing a gross jurisdictional error, nor can the court allow a review application to become an appeal in disguise.

In **Paramita Das-vs.-Pranati Sarkar, AIR 2004 Calcutta 22**, a Division Bench of this Court echoed the same view that an erroneous decision cannot be reheard and corrected by the court in exercise of its jurisdiction under O. 47 R. 1 of the CPC. An erroneous decision cannot be categorized as an error apparent on the face of the record.

(12) Mr. Ganguly then submitted that the amount of maintenance was fixed at Rs. 16,000/- per month with the tacit consent of the petitioner/her counsel. Hence, the petitioner should not be permitted to re-agitate the issue of the quantum of maintenance. He submitted that the issue as regards the quantum of maintenance has become *res judicata* between the parties hereto. In this connection he referred to a decision of a Learned Single Judge of this court in the case of **Bank of Baroda-vs.-Fishco, AIR 1975 Calcutta 225**, which, in my opinion, does not have much relevance for the purpose of the present case.

(13) In reply, Mr. Lahiri, Learned Senior Counsel referred to the Hon'ble Supreme Court's decision in **Board of Control for Cricket in India-vs.-Netaji Cricket Club, (2005) 4 SCC 741**, and in particular paragraphs 89 and 90 of the judgment in support of his submission that the words 'sufficient reason' in O. 47 R. 1 of the CPC are wide enough to include a misconception of fact or law by a court or even an advocate. He also relied on a decision of a learned Single Judge of

this Court in **Samir Kumar Naskar-vs.-Director of School Education, 2006 (1) CLJ (Cal) 110,** in which the learned Judge relied on the Hon'ble Apex Court's aforesaid observation in the case of **Board of Control for Cricket in India (supra)**.

(14) I have given anxious consideration to the rival contentions of the parties.

(15) There is no doubt that a review petition under O. 47 R. 1 of the CPC is maintainable only in limited circumstances. The jurisdiction of a court sitting in review of its earlier order is a restricted one. In my view, however, the issue of maintainability of the present review petition becomes an academic one since the Hon'ble Supreme Court has expressly granted liberty to the petitioner to approach this court by way of review of this court's judgment and order dated 2 February, 2015. In my opinion, the matter ends there in so far as the question of maintainability of the application is concerned.

(16) However, since argument has been made at length on this issue, I take the liberty to add a few words. O. 47 R. 1 of the CPC clearly permits review of an order if there is some mistake or error apparent on the face of the order. What is an error on the face of the order has been the subject of discussion in several decisions of the Hon'ble Apex Court and the High Courts. The elementary principle that can be

culled out from such decisions is that the error must be patent on the face of the order and must not be such which requires a long process of searching for its detection. If a court arrives at a conclusion in an order without giving reason in respect thereof, can it be said that the order suffers from an *ex facie* error? In my opinion, the answer must be in the affirmative. Reasons are the heart and soul of an order without which an order may appear to be arbitrary. Reasons indicate how a court's mind has worked in coming to a particular conclusion. Without supporting reasons, an order becomes a mere *ipse dixit*. If an order does not contain reasons in support of the conclusion, it makes it very difficult for the aggrieved party to challenge the same before a higher forum. Similarly, a higher forum would not know the basis on which an impugned order has been passed. Giving reasons in support of a judicial or quasi-judicial order has indeed become a part of the principles of natural justice. Considering all these things, in my opinion, an unreasoned order suffers from an error on the face of it.

(17) This court while fixing the quantum of maintenance at Rs. 16,000/- per month by the order under review, did not record any reason as to why the amount was fixed at Rs. 16,000/- and not more or less. This court also did not advert to the principles of law which have been laid down by authorities which should be followed in fixing

the quantum of maintenance. It may be noted that in **Lily Thomas (supra)**, the Hon'ble Apex Court observed that error apparent on the face of the proceedings includes an error which is based on clear ignorance or disregard of the provisions of law. In fact, the order fixing maintenance at Rs. 16,000/- was passed solely on the basis of the consent of Learned Counsel for the respondent that the respondent was willing to pay Rs. 15,000/- per month as maintenance. Accordingly, in its earlier order dated 7 September, 2015, the Hon'ble Apex Court observed that the order does not contain any reasoning by which the court came to a conclusion that the amount of maintenance of Rs. 16,000/- would be adequate and proper.

(18) It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. Law is not a set of empty and mechanical rules. It is not an end in itself. It is a means to deliver justice. A law that obstructs administration of justice is a malediction, a contradiction in terms. A law that does not ensure justice is as useless as a refrigerator that does not cool, as vain as a fancy vehicle without the engine. If the Court finds that the error pointed out in the review petition was under mistake and the earlier judgment would not have been passed but for

an erroneous assumption which, in fact, did not exist and its perpetration has resulted in miscarriage of justice, nothing would preclude the court from rectifying the error. Further, as observed by the Hon'ble Apex Court in the case of **Board of Control for Cricket in India (supra)**, the words 'sufficient reason' in O. 47 R. 1 of the CPC are wide enough to include a misconception of law by a court or even an advocate. This court has no hesitation in saying that by passing the order under review solely on the basis of the consent of the respondent and without independent application of mind, this court committed an error of law which is writ large on the face of the order.

(19) I should also bear in mind that it has been repeatedly held by the Hon'ble Apex Court that the High Court is a court of plenary jurisdiction. The word plenary has been defined in Black's Law Dictionary, 9th Ed. As 'full; complete; entire'. Similar is the definition of the word 'plenary' in Wharton's Law Lexicon, 16th Ed. The Pocket Oxford Dictionary of current English (1996 Ed.) defines the word plenary to mean 'not subject to limitation or exceptions; not incomplete'. If the High Court feels that it has passed an erroneous order which has caused injustice to a party, in my opinion, nothing prevents the court from reconsidering the order and correcting the same by removing the error. In my opinion, not only the High Court

has such power but also the solemn duty to do so. I am of the view that O. 47 R. 1 puts a restriction on the parties to approach the court for review of an order only on the grounds mentioned therein, but, that provision does not and cannot curtail the High Court's power to pass orders *ex debito justitiae.* The High Court's inherent power to rectify an error, whether of fact or of law, cannot be abridged or restricted by legislation.

(20) For the reasons aforestated, I hold that this review application is maintainable.

(21) Coming to the question as to what should be the amount of maintenance in the present case, it is settled principle of law as would appear from the decisions discussed above, that no hard and fast formula can be laid down for deciding the quantum of maintenance. The ability of the husband, the strata of the society to which the couple belong, the standard of living that the wife was used to at her husband's residence, other financial obligations of the husband which he is obliged to discharge as per law are all factors which need to be considered while fixing the quantum of maintenance. In the case of **Dr. Kulbhushan Kunwar (supra)**, the maintenance was fixed at 25 per cent of the income of the husband. Although there is no hard and fast rule, it would appear from judicial precedents that generally a wife's

maintenance is fixed at a figure between 20 per cent to 30 per cent of the husband's net income. The object is to enable the estranged wife to live a life of dignity and in reasonable comfort. While law does not envisage that a man has to ensure a lavish life for his ex-wife, law also does not countenance a man getting away by paying a pittance as maintenance leaving his ex-wife in financial misery and stringency. A balance has to be struck depending on the facts and circumstances of each case.

(22) In the present case, the petitioner has relied on statements of the respondent's income for the months of January, 2015 and February, 2016. In January, 2015 the respondent appears to have had a net income of Rs. 63,842/- after deduction of Rs. 24,000/- on account of GPF and Rs. 12,000/- on account of income tax. In February, 2016 the respondent appears to have had a net income of Rs. 95,527/- without allowing for deduction of GPF amount. These statements have not been disputed by the respondent. The respondent has not disclosed any material to show that his incomes for the said two months were different from what the petitioner has asserted. Hence one can accept the correctness of the statements relied upon by the petitioner.

(23) Then comes the question as to whether or not the provident fund contribution should be deducted from the husband's salary to arrive at his net income for the purpose of fixing the quantum of maintenance. In my opinion, no such deduction should be made as the provident fund contribution enures to the husband's benefit solely and is in the nature of forced saving for the future. On this issue, I am in agreement with the decision of the Patna High Court in the case of **Indu Dhari Singh (supra)**. Hence, it would not be improper to proceed on the basis that the respondent's net salary is Rs. 95,000/- approximately.

(24) Then comes the question as to what should be an adequate and proper amount of maintenance for the petitioner without exposing the respondent to undue hardship. I am told that the son of the parties completed 18 years of age and thus attained majority in October, 2014. Hence ordinarily he will not be entitled to be maintained by the respondent. Accordingly this Court is concerned with only the petitioner's maintenance. In **Dr. Kulbhushan Kunwar's (supra),** case the wife's maintenance was fixed by the High Court at 25 per cent of the husband's net income which was upheld by the Hon'ble Apex Court. Hence, 25 per cent should be a safe formula to apply in the facts of this case also. 25 per cent of Rs. 95,000/- comes to 23,750/-. It may not be entirely coincidental that the petitioner by amending her

petition for enhancement of maintenance amount had claimed 23,000/- per month. Since the petitioner herself claimed Rs. 23,000/- per month, it can be safely assumed that the said amount would enable her to have a reasonably comfortable lifestyle. Although the petitioner had claimed Rs. 23,000/- per month for maintenance of herself and her son, about 5 years have elapsed since then. Keeping in mind the trend of inflation and the general increase in the consumer price index, I am of the view that even for the petitioner alone, Rs. 23,000/- per month would be a fair and proper amount of maintenance.

(25) In the affidavit-in-opposition to the review petition, the respondent has asserted that the petitioner earns Rs. 30,000/- per month. However, no evidence in support of such statement has been disclosed. The petitioner has categorically denied such assertion of the respondent. In the absence of any evidence at all, I am unable to accept the statement of the respondent as regards the petitioner's earnings. The respondent also cannot gain any mileage from the fact that the petitioner resides in the house of the petitioner's father, since she appears to be doing so under circumstantial compulsion and not out of option.

Further, the respondent has not disclosed any other monetary liability excepting the expenses for maintaining himself.

(26) In view of the aforesaid, the order under review is modified by enhancing the amount of maintenance from Rs. 16,000/- to Rs. 23,000/- per month. The other portions of the order under review shall remain as they are including the date from which the enhanced rate of maintenance shall be applicable and the payment of the differential amount between earlier alimony and the enhanced alimony. It is made clear that the petitioner alone will be entitled to the aforesaid maintenance amounts and not the son of the parties.

(27) RVW 85 of 2016 is accordingly disposed of.

(28) Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arijit Banerjee, J.)