**REPORTABLE**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2017
(CC 4339/2017)

Sasi (D) Through Lrs. Petitioner (s)

Versus

Aravindakshan Nair and Others Respondent(s)

**J U D G M E N T**

**Dipak Misra, J.**

In this special leave petition, the challenge is to the order dated 9th March, 2012, passed by the learned Single Judge of the High Court of Kerala at Ernakulam in R.S.A. No.345 of 2012 and the order dated 26th October, 2016, passed in Review Petition No.886 of 2012.

2. Ordinarily, we would have passed a short order in the matter dismissing the special leave petition which would have paved the path for extinction for the litigation, for it is devoid of any merit warranting any interference but, an

eloquent one, the circumstances impel us to state something more.

3. A Regular Second Appeal was preferred before the High Court under Section 100 of the Code of Civil Procedure challenging the judgment and decree passed in Appeal Suit No.149 of 2008, which had given the stamp of approval to the judgment and decree passed by the learned Munsiff, Alappuzha in O.S. No.518 of 2003. The learned Single Judge of the High Court dismissed the Second Appeal on 9th March, 2012. The appellant therein filed a review petition under Order 47 Rule 1 C.P.C. on 20th September, 2012. The review was barred by limitation and eventually, the same was not entertained on merits.

4. We are really not concerned with the entertaining of an application for review with some delay, but what is perplexing is that the review petition preferred in 2012, was kept pending for almost four years and, thereafter, the High Court has dismissed the same by observing that an effort has been made to seek review of the main judgment as if the High Court was expected to exercise appellate jurisdiction while dealing with an application for review.

5. Order 47 Rule 1 of the Code of Civil Procedure reads as follows:-

> "1. **Application for review of judgment.**- (1) Any person considering himself aggrieved -
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> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.
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> (b) by a decree or order from which no appeal is allowed, or
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> (c) by a decision on a reference from a Court of Small Causes,
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> 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.
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> (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.
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> *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.

6. The grounds enumerated therein are specific. The principles for interference in exercise of review jurisdiction are well settled. The Court passing the order is entitled to review the order, if any of the grounds specified in the aforesaid provision are satisfied.

7. In ***Thungabhadra Industries Ltd. v. Govt. of A.P.***[1], the Court while dealing with the scope of review had opined:-

> "What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.*"

8. In ***Parsion Devi v. Sumitri Devi***[2], the Court after

[1] AIR 1964 SC 1372
[2] (1997) 8 SCC 715

referring to ***Thungabhadra Industries Ltd.*** (supra), ***Meera Bhanja v. Nirmala Kumari Choudhury***[3] and ***Aribam Tuleshwar Sharma v. Aribam Pishak Sharma***[4], held thus:-

> "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 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 a limited purpose and cannot be allowed to be "an appeal in disguise"".

9. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to be self-evident and is not to be found out by a process of reasoning. We have adverted to the aforesaid aspects only to highlight the nature of review proceedings.

10. In the case at hand, be it clearly stated, we are really not concerned with the exercise of the power of review and its limitation by the court. We are concerned with the delay in disposal of the application for review which was kept pending

[3] (1995) 1 SCC 170
[4] (1979) 4 SCC 389

for a span of four years.

11. An application for review, regard being had to its limited scope, has to be disposed of as expeditiously as possible. Though we do not intend to fix any time limit, it has to be the duty of the Registry of every High Court to place the matter before the concerned Judge/Bench so that the review application can be dealt with in quite promptitude. If a notice is required to be issued to the opposite party in the application for review, a specific date can be given on which day the matter can be dealt with in accordance with law. A reasonable period can be spent for disposal of the review, but definitely not four years. We are compelled to say so as the learned counsel for the petitioner has submitted that there is a delay of 1700 days in preferring the special leave petition against the principal order as he was prosecuting the remedy of review before the High Court. The situation is not acceptable.

12. We are obliged to observe certain aspects. An endeavour has to be made by the High Courts to dispose of the applications for review with expediency. It is the duty and obligation of a litigant to file a review and not to keep it

defective as if a defective petition can be allowed to remain on life support, as per his desire. It is the obligation of the counsel filing an application for review to cure or remove the defects at the earliest. The prescription of limitation for filing an application for review has its own sanctity. The Registry of the High Courts has a duty to place the matter before the Judge/Bench with defects so that there can be pre-emptory orders for removal of defects. An adroit method cannot be adopted to file an application for review and wait till its rejection and, thereafter, challenge the orders in the special leave petition and take specious and mercurial plea asserting that delay had occurred because the petitioner was prosecuting the application for review. There may be absence of diligence on the part of the litigant, but the Registry of the High Courts is required to be vigilant. Procrastination of litigation in this manner is nothing but a subterfuge taken recourse to in a manner that can epitomize "cleverness" in its conventional sense. We say no more in this regard.

13. We request the High Courts not to keep the applications for review pending as that is likely to delay the matter in

every court and also embolden the likes of the petitioner to take a stand intelligently depicting the same in the application for condonation of delay.

14. Let a copy of this order be sent to the Registrar General of each of the High Courts so that it can be placed before the learned Chief Justice/Acting Chief Justice of the High Court to do the needful in the matter.

15. As earlier indicated, the special leave petition has to pave the path of dismissal and accordingly it stands dismissed, both on the ground of delay, as well as also on merits.

.....J.
(Dipak Misra)



.....J.
(Mohan M. Shantanagoudar)

New Delhi;
March 03, 2017.