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Review under CPC: Analysis of the Underlying Judicial Policy

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Review Under CPC: Critical Analysis Of The Underlying Judicial Policy

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ABSTRACT

The paper focuses on the underlying judicial policy with respect to review under CPC. Review is an exception to the rule that once the court has pronounced the judgment and signed, it has no jurisdiction to alter it and it ceases to have control over it. The authors have analyzed as to when does review lies or by whom can it be made. In this paper the authors have also analyzed the grounds on which review lies. Our judicial system is designed in such a way that any such error made in the course of judgment can be rectified. There are 4 ways in which even after a judgment is passed, the aggrieved party who feel that justice has wrongly been given, can ask for an appeal against the decree, file an application of review or reference or in some cases, a subordinate court can make references to the High Court, which is why the authors have analyzed the difference between Review, Revision, Reference and Appeal. The authors have also analyzed the judicial precedents with respect to review and the judicial opinion with respect to procedure of review.

KEYWORDS: REVIEW; REVISION; REFERENCE; APPEAL.

Introduction

Review is an exception to the rule that once the court has pronounced the judgment and signed, it has no jurisdiction to alter it and it ceases to have control over it. The power of review in civil cases is derived from section 114 of the Civil Procedure Code, while Order 47 of CPC provides for the procedure of Review. The general principle is that once the court has decided on a particular case, the court becomes *Functus officio*, which means that such a judgment is final and that it cannot be changed. Review is a very reluctant step by the court, and it is called only when there is a serious error or some omission in the judgement.¹ The power of Review is different from that of appellate powers, in an appeal the power is given to the appellate court to correct errors committed by the subordinate court.² In Review the case is again decided by the same court. A review case is not equal to that of original case and the case cannot be reopened or reconsidered or the decision cannot be changed until the court is sure that they have committed a grave error. To review a case which has already been decided is a waste of time if no error is found. If the review application is not maintainable before the court, then it cannot be described as an application for clarification or modification.³ The right to review is a substantive as well as a procedural right. It is not an inherent right and has to be expressly conferred by law. A procedural law the court can correct any defect or misrepresentation or fraud of a party.⁴ Review means reconsideration of the judgement by the same court, in some countries in place of review there is a writ of error. The philosophy behind this doctrine of review is that due to an error committed by a human being, justice should not suffer. Justice should prevail at any cost.⁵

¹ C.K Takwani, Civil Procedure and Limitation, 8th Edition, 2019

² Lily Thomas v. Union of India, (2000) 6 SCC 224.

³ Delhi Admn. v. Gurdip Singh Uban, (2000) 7 SCC 296.

⁴ Ibid.

⁵ Common Cause, A Registered Society v. Union of India, (1999) 6 SCC 667.

CHAPTER I: REVIEW UNDER CIVIL PROCEDURE CODE

WHO MAY APPLY FOR REVIEW?

The application for the review of the judgement can be filed by the aggrieved party against whom the order or decree of court has been passed. There is no definition of an aggrieved party and it is an elusive concept.⁶ The term aggrieved party in the common use means the party against whom the decree or an order has been passed. The aggrieved party can file an application for review of the judgment if they feel that the judgment has been wrongfully pronounced.⁷ The term person aggrieved is not conclusive and sometimes the term “party aggrieved” has been used. A person who is not a party to the judgment and he is not affected by the decree, he cannot apply for review. The third party can only apply for review if it has been affected by the order passed by the court.⁸

WHEN DOES REVIEW LIES?

1. A decree or order is open to review if no appeal is allowed. When an appeal is dismissed because it is time-barred or it was incompetent, the party can file for review.⁹
2. In case where appeal lies but is not preferred, appeal is also available to the aggrieved party if the review petition is maintainable, the fact that if an order can be appealed in the higher court is not a ground to reject an application for review. The application for review can be filed if no appeal has been instituted, however if the appeal has already been filed before the review application, the court will not allow the review application. If the higher court dismisses the appeal no review can be filed in the lower court.¹⁰ However, in cases where the appeal is filed after the review the jurisdiction of the court deciding the review will not be affected. If the court allows review before the disposal of appeal, the decree will not be allowed, and appeal will not be allowed. In case where appeal is decided on merits before the review application, such petition will be dismissed.¹¹
3. The CPC allows review of the judgement on a reference from the small causes court.¹²

⁶ Supra at 1.

⁷ *Jasbhai Motibhai v. Roshan Kumar*, (1976) 1 SCC 671.

⁸ *Shivdeo Singh v. State of Punjab*, AIR 1963 SC 1909.

⁹ *Ram Baksh v. Rajeshwari Kunwar*, AIR 1948 All 213.

¹⁰ Supra at 1.

¹¹ Supra at 9.

¹² Order 47 Rule 1(1)(c), Civil Procedure code, 1908.

BY WHOM REVIEW MAY BE MADE?

Review is reconsideration of the same judgment that has been passed by the same court and if possible, by the same judge, if the same judge is available then he has the jurisdiction to decide the case again and review it. The reason behind this is that the judge will remember the arguments that were contended before him and what was not. Therefore, it is best suited that he should review the decision because he is best suited to remove any error made in his own judgment.¹³ However, in cases where it is not possible for the judge who gave the judgment to review it then his successor or any other judge of same jurisdiction may decide the case.¹⁴

FORM OF APPLICATION

The application of review should be a memorandum of application; however, form of application is immaterial. What the substance of application is more important.¹⁵

PROCEDURE AT HEARING

In the first stage the application commences ex-parte by the aggrieved party, the court after looking into the application may reject the application or accept it and call the other party to show why review should not take place.¹⁶ In the second stage the application of review shall be heard again by the same court and if the rule is discharged, then the application will be dismissed, while if the rule is made absolute then the matter will be heard again.¹⁷ In the third stage the case will be decided on the merits, the court after deciding the case may grant the original decree or vary it.¹⁸ Any order that will be made by the court which modifies the decree or reverses it, then a new decree will be passed which will supersede the previous one.¹⁹

LIMITATION

The application for review of a judgment should be made within 30 days from the date of the decree or order other than that in the supreme court.²⁰

¹³ Supra at 1.

¹⁴ Reliance Industries Ltd. v. Pravinbhai, (1997) 7 SCC 300.

¹⁵ Raja Shatrunji v. Mohd. Azmat, (1971) 2 SCC 200.

¹⁶ Order 47 R. 4(1), Civil Procedure Code 1908.

¹⁷ Order 47 R. 4(2), Civil Procedure Code 1908.

¹⁸ Order 47 R. 8, Civil Procedure Code 1908.

¹⁹ Sushil Kumar v. State of Bihar, (1975) 1 SCC 774.

²⁰ Art. 124, Limitation Act, 1963.

REVIEW (WRIT PETITIONS)

The provisions of Order 47 do not apply to the writ petitions under Article 226 that are filed in the High Court, due to the amendment in Section 141 of Civil Procedure Code. Nothing in Article 226 can prevent the High Court from exercising the power of review. The High Court can review a judgment and erase a possible error that might have occurred.²¹ However, there are certain defined limits to exercise the power of review. The High Court has the power to review under Article 226 of the Constitution and Order 47 does not apply to the power of review of the High Court. This power of review should be utilized by the High Court if there is a miscarriage of justice.²²

REVIEW BY SUPREME COURT

Article 137 of the Constitution confers the power to the Supreme Court to review judgments subject to any laws or rules made by the parliament under Article 145. The Civil procedure code cannot curtail the power of Supreme Court.²³



²¹ Supra at 8.

²² Gujarat University v. Sonal P. Shah, AIR 1982 Guj 58.

²³ Art. 137, Constitution of India, Or. 40, Supreme Court Rules, 1966.

CHAPTER II: GROUNDS FOR APPLICATION OF REVIEW

Application for review can be made following grounds:

DISCOVERY OF NEW EVIDENCE

An application for review can be filed by the applicant if there is a discovery of some new evidence which was not possible to present at the time the decree was passed.²⁴ It is a general rule that the decree passed will not be overturned until there is a very strong reason to do so. So, when the ground of new evidence is the reason for review of judgment utmost care is taken. The party who lost the case will try their best to collect evidence on the weak points of the case by trying to find evidence and change the case in the favor of the party that lost.²⁵ The party who has filed for review must show that there was proper care taken while adducing evidence at the trial, and that the new evidence should be conclusive in nature or of such a nature that it would change the decision of the court. In the case where the evidence could have been produced at earlier stage and reasonable care could have been taken the application for review will be refused.²⁶

ERROR APPARENT ON THE FACE OR RECORD

Error apparent on the face of record is another ground for review. Error should be determined by examining the case on the facts. If the error is not self-evident and requires examination, then it will not be termed as error apparent on the face of record. The error which need a long process of consideration of all the law points then it will not be termed as error apparent on the face of record.²⁷ Reasons like non-consideration of a statutory provision or omission of a material issue or when the amendment in law took place retrospectively these reasons will not be termed as error apparent on the face of record. The Explanation to Order 47 Rule 1 states that if the question of law on which the judgment is based and if it has been reversed in the subsequent judgment will not be ground to review the judgment.²⁸

²⁴ Nundo Lal v. Punchanon Mukherjee, AIR 1918 Cal 618.

²⁵ Ibid

²⁶ Supra at 1.

²⁷ Thungabhadra Industries Ltd. v. Govt. of A.P, AIR 1964 SC 1372.

²⁸ Supra at 1.

OTHER SUFFICIENT REASON

The phrase “sufficient reason” isn’t defined anywhere. But reasons like when the judgment has been passed under some misapprehension of circumstances or when the party was not provided with the opportunity to produce the evidence or when the court has failed to consider some important issue or if the court has failed to consider any statutory provision, these will be considered sufficient reasons while, reasons like or absence of the party on the date of the hearing; or subsequent events; or failure of a party or his pleader to raise a plea or the case was mismanaged by his counsel or there was different view taken by the court in the subsequent case, these will not be considered as sufficient reasons.²⁹



²⁹ Supra at 1.

CHAPTER III: RELATION OF REVIEW WITH REFERENCE, APPEAL AND REVISION

The judges who give the judgments have basic human nature and a human nature is bound to make mistakes some time or the other. For that reason, our judicial system is designed in such a way that any such error made in the course of judgment can be rectified. There are 4 ways in which even after a judgment is passed, the aggrieved party who feel that justice has wrongly been given, can ask for an **appeal** against the decree, file an application of **review** or **reference** or in some cases, a subordinate court can make **references** to the High Court.

REVIEW AND REFERENCE

These two procedures deal with bringing fairness to the legal system. Reference has been mentioned under section 113 and Order 46 of the Civil Procedure Code whereas right to review is given under section 114 and Order 47. Even though both the procedures are under the same judicial system, both are very different from each other. Under both of them, the main difference is that under reference, a subordinate court seeks clarification from the High court when there is a question of validity of judgment. Whereas in review, it is the aggrieved party which asks for re-examination of the case.³⁰

Every court case is different and it is not possible to have a unified solution for all of them. That is why it is important in some cases to get clarification from Higher Courts before passing out any judgment on a particular case. It is primarily done to avoid errors and in this, the High Court has the right to interpret the legislative provision. But it is to see that not every case can go for reference to the High Court. There are some requirements which have to be kept in mind. The case can be referred only by a civil judicature or by an appeal of a party under ‘suo moto’ process. However, when you look at review, the process is done in the same court where a judge itself re-evaluates new evidence and errors which happened in the legal process. It allows re-correction of human error during the course of judgment so that an innocent person doesn’t pay the price.³¹

The key differences which arises between reference and review is that through reference, the subordinate court asks for clarification from the High Court for any provision under law. Under review, the party seeks justice in the same court which gave the judgment. Reference is just a communication between the subordinate court and high court. Review petition is done when there

³⁰ Supra at 1.

³¹ Ibid.

is a petition for re-examine if there is a newly appeared evidence or error in the previous case. Ground for reference arises on the question of validity of the provision of an act, ordinance or regulation. Ground for review arises on discovery of new evidence or any other reason which deems to be satisfactory. Lastly, the proceeding of reference can start even when there is pendency of case. It has to be done before a judgment or decree is passed. However, the process of review petition can only begin when the judge had already passed a judgment or decree against the party who is aggrieved.

REVIEW AND APPEAL

Under the judicial system, the higher courts have appellate jurisdiction under which the cases are re-examined. However, in some cases where the appeal is not given to the parties, the Civil Procedure Code has introduced the concept of review in these matters. In the case of *Usha Ranee Banik vs Hardas*³², it was seen that the concept of review shall arise only when there is a mistake which is apparent on the record and not on any inaccurate call.

Appeal is given from section 96 to 112 of CPC for civil cases. The actual term ‘appeal’ isn’t defined anywhere. It is termed as the power of the higher authorities or higher court to re-examine the judgment given by the lower authorities or lower court. It cannot be said as inherent right but as statutory right. It is the re-hearing of the whole case/dispute in the higher court.

The power of both appeal and review of the court are in accordance to the circumstances of the case and are applied in the court in different manner and different criterion. To rightly point out the distinction between the two, review, in basic terms means to reconsider, to look again into the matter which is done by the same judge in the same court. An appeal petition requires an application to be filed to the Higher Court for considering or looking into the decision given by the lower court. Where a review is made merely to rectify any error which has been made in the interest of the party, the appellate courts re-examine the questions of facts and law and even look into the evidences presented in the case all over again. As mentioned above, it is important for discovery of a new valid matter for the case to go under review or there has to be error in judgment or any other sufficient reason. On the other hand, the grounds of appeal are such that the case should have already been decided in the subordinate court and not pending in the high court. Any person, whose name has been entered into the suit and is a party to the suit, has been adversely by the decree given in the suit can file for an appeal petition in the higher court. Lastly, when any

³² Usha Ranee Banik vs Hardas , AIR 2005 Gau 1.

person is bound by a decree which would operate res judicata against him. The review petition can be filed by the aggrieved party when he does not have the right to appeal.³³

REVIEW AND REVISION

The term has not been per say ‘defined’ in the Civil Procedure Code but has been mentioned under section 115 of the CPC. It is the power of the court to revise the cases which has already been decided by the subordinate courts. This jurisdiction which the high court have is known as ‘Revisional Jurisdiction’ of High Court. For a revisional jurisdiction to be applied, the case has to be decided by the lower court and no appeal should have been exercised. In the case of Major S.S Khanna vs Brig F.J Dillion³⁴, it was held by the Supreme Court that if there is availability of any other remedy, revisional jurisdiction shall not be exercised.

As mentioned before, both of these powers are mentioned in different provisions of CPC. Where review is just re-examining the case in the same court in front of the same judge, revision means that the higher court shall revise the judgment of any case which has been decided by the subordinate or lower court. It is done with the view of correcting a judgment which the higher court deems fit. Revision mostly deals with any illegality or irregularity which comes to the notice of the High court and examine the records and proceeding which can be corrected by the High Court. The provision dealing with both review and revision are mentioned under section 114 and section 115 of the CPC respectively. For the provision of revision to be applied, the case necessarily has to be decided by the subordinate court and no appeal for that case should be pending in the High court. It should also be seen that subordinate or lower court, while deciding the case, 1) must have exercised some jurisdiction which is not mentioned under law 2) have failed to exercise the jurisdiction it has been vested with and 3) the lower court has exercised its given jurisdiction in an illegal manner or with irregularity. The similarity between the two is that if the right to appeal is not allowed to the aggrieved party, he can either file a review application or a revision application based on the circumstances of the case.

³³ Ibid

³⁴ Major. S.S. Khanna v. Brig. F.J. Dillion, 1964 AIR 497.

CHAPTER IV: JUDICIAL PRECEDENTS

The Supreme Court in the case of *Lily Thomas vs Union of India*³⁵ laid down that the word ‘review’ is, “the act of looking, offer something again with a view to improve.”³⁶ In the case of *Patel Narshi Thakeshi vs Pradyumansinghji Arjun Singhji*³⁷ it was stated that the power of review is not an inherent power which means that it has to be conferred by law by specifically stating or necessarily implied. Review cannot be said to be an appeal in disguise. Lily Thomas case quoted that ‘law has to bend before justice’³⁸ It stated that if the judgment on the case was made under mistake and that the earlier judgment would not have been passed which would have prevented a miscarriage of justice, the Court would not have to correct the error made in the judgment.

The concept of review petition is also accepted in English Courts. In the case of *R vs IRC Ex parte Preston*³⁹ it was stated by Lord Scarman that judicial review as a remedy shall not be made available if there are other remedies present. It cannot be compared to an appeal. When appeal procedures are already provided, the collateral process of judicial review should be used rarely.

The High Court of Madhya Pradesh in the case of *Principal Commissioner of Customs vs M.S.S Foods Processors*⁴⁰ held that a review petition can be made only when there is an error or mistake made on the face of record or there is some other sufficient reason. This error must be apparent and should be made out without conducting further detailed examination. Re-examining a case without any apparent error is not permissible and can be challenged under section 114 and order 47 Rule 1 of the CPC and article 226 of the Constitution of India.

The Supreme Court in *Asstt. Commissioner of Income Tax vs Saurashtra Kutch Stock Exchange Ltd.*⁴¹ said that an error cannot be said to be apparent or on the face of it if one has to look beyond records to find whether the judgment passed was correct or not. It does not have to be something

³⁵ *Lily Thomas vs Union of India*, (2000) 6 SCC 224.

³⁶ SCC PP. 247-48, Para 52.

³⁷ *Patel Narshi Thakeshi vs Pradyumansinghji Arjun Singhji*, (1971) 3 SCC 844.

³⁸ *Lily Thomas vs Union of India*, (2000) 6 SCC 224.

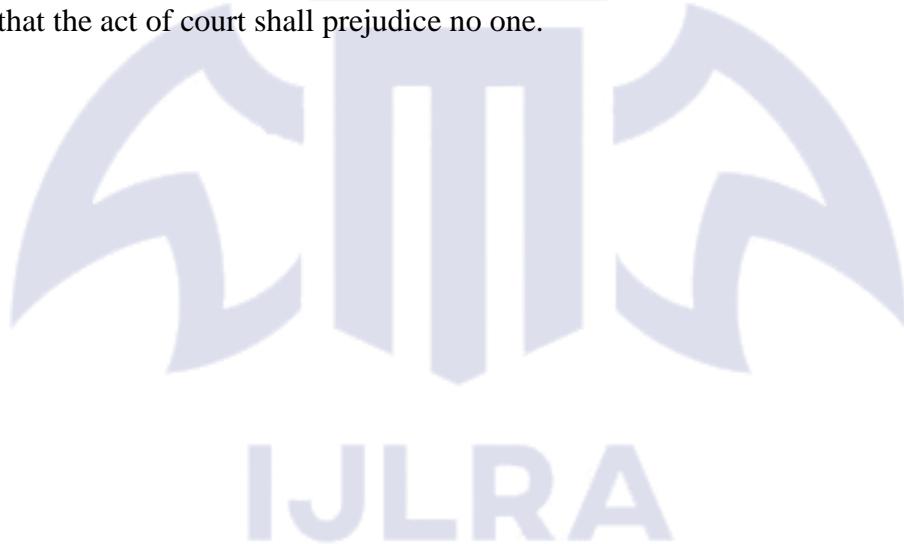
³⁹ *R vs IRC Ex parte Preston*, (1985) 4C 835 = (1985) 2 A 11 ER 327 = (1985) STC 282.

⁴⁰ *Principal Commissioner of Customs vs M.S.S Foods Processors*, 2017 (7) G.S.T.L 394 (MP).

⁴¹ *Asstt. Commissioner of Income Tax vs Saurashtra Kutch Stock Exchange Ltd*, 2008 (230) E.L.T 385 (SC).

which needs a long-drawn reasoning as to why there is an error, rather something can be struck off on one look. Also, in the case of *JSW Energy Limited vs Union of India*⁴² it was held by the Hon'ble Delhi High Court that review does not itself concern with the judgment but the process of making the decision/judgement. It is the review of the manner the judgment was made and not what was made.

Lastly, in the case of *Board of Control for Cricket in India vs Netaji Cricket Club*⁴³, it was held that Order 47 Rule 1 of CPC provides for filing of an application for review which shall be maintainable not only on discovery of any new evidence or if there is an apparent error on the face of record, but also if there is any other sufficient reason or necessary on the account of same mistake. Thus, a mistake made by the court would naturally be called for a review of the order. The term 'sufficient reason' under Order 47 Rule 1 is wide enough to be interpreted in a misconception of fact or law. The doctrine of review lies under the doctrine of 'actus curiae neminem gravabit' which means that the act of court shall prejudice no one.



⁴² JSW Energy Limited vs Union of India, 2019 (17) G.S.T.L 198 (Bom.).

⁴³ Board of Control for Cricket in India vs Netaji Cricket Club, (2005) 4 SCC 741.

CONCLUSION

In this paper, we have defined the meaning of the term ‘Review’ under the Civil Procedure Code. It is mentioned under section 114 and Order 47 of the CPC Order XLVII mentions the nine rules which imposes conditions on review. To say, the power of review is the power vested to the courts by law and is a substantive power. The objective of the power of review is to ensure that justice is served and that no innocent is falsely accused or harmed. To rightly say, the law has to bend before justice. The re-examination of the facts and judgment of the case is done in the same court and in front of the same judge (or their successor-in-office) who gave the earlier judgment. The most important condition is the discovery of a new or important matter or evidence which wasn’t mentioned before and now is necessary in the proceedings. Any mistake or error of law is one of the grounds in which a review petition can be filed, or any other sufficient reason which can be interpreted to be deemed fit by the judicial committee.

The right of review judgment is an exception to the Latin term ‘functus officio’ which means that once a judgment is passed by the court, the case cannot be reopened and the judgment is binding on both the parties. On the application filed by an aggrieved person, the proceeding for review of judgment can be initiated. The review petition, when a decree is passed by High court can be made to that judge, or their successor. And when a decree is passed by any court other than High Court, the review application shall be filed to the same judge who gave the judgment regarding the case or their successor in office. To conclude, the power of review is the power where a court review its own judgment and ensures that justice is served.

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