C G R F
B Y P L

Consumer Grievance Redressal Forum
FOR BSES YAMUNA POWER LIMITED
(Constituted under section 42 (5) of Indian Electricity Act. 2003)
Sub-Station Building BSES (YPL) Regd. Office Karkardooma
Shahdara, Delhi-110032
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C A No. Applied For
Complaint No. RA No. 08/2024 IN C.G. No. 115/2024

In the matter of:

Priyanka Khullar .....Complainant

VERSUS

BSES Yamuna Power Limited .....Respondent

Quorum:

1. Mr. P.K. Singh, Chairman
2. Mr. Nishat A Alvi, Member (CRM)
3. Mr. P.K. Agrawal, Member (Legal)
4. Mr. S.R. Khan, Member (Technical)
5. Mr. H.S. Sohal, Member

Appearance:

1. Ms. Beena Rani, Land Lady
2. Mr. Akash Swami, Ms. Chhavi Rani & Ms. Akshat Aggarwal, On behalf of BYPL

ORDER
Date of Hearing: 11th July, 2024
Date of Order: 16th July, 2024

Attested True Copy
Secretary
CGRF (BYPL)

Order Pronounced By:- Mr. P.K. Agrawal, Member (Legal)

1. The complainant approached the Forum on 21.02.2024 for reconnection of electricity connection 100861503 in the capacity of tenant. The Forum heard both the parties at length and reserved the case for orders and vide its order dated 27.05.2024 allowed the complainant's application for reconnection on the basis that "**It shows that the complainant came in possession of premises by valid tenant lease deed and even now there is no evidence regarding the fact that she has been evicted from the premises with the due course of law.**

Attested True Copy
Secretary
CGRF (BYPL)

The legal position is very much clear that as per Schedule of the Act 2023, an occupier of the premises is entitled for electricity connection and licensee cannot deny the electric connection to such an occupier of the premises. The complaint is allowed. OP is directed to restore the electricity connection of the complainant vide CA No. 100861503.

2. Against this order of the Forum, OP filed a review petition in the Forum on the following grounds:-

   i) That the owner/registered owner of the connection approached the licensee to submit that the connection has been restored to the alleged tenant who holds no tenancy rights qua the applied premises.

   ii) That Priyanka Khullar alleged tenant has never taken the premises on rent but on security and said security amount has been returned to Priyanka Khullar.

   iii) That the possession of title itself states that they have already elapsed and in terms of the representation of the owner there is no valid possession with the complainant namely Priyanka Khullar.

3. We have heard both the parties in details and perused the pleadings filed by them.

4. This Forum can review the orders under Regulation 19 of the Delhi Electricity Regulatory Commission (Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2018 which stipulates as follows:-

Power to Review

(1) Any person may file an application for review before the Forum, upon 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 order was passed or on account of some mistake or error apparent from the face of the record, within thirty (30) days of the date of the order, as the case may be.

(2) An application for such review shall clearly state the 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 order was passed or the mistake or error apparent from the face of the record. The application shall be accompanied by such documents, supporting data and statements as the Forum may determine. (3) When it appears to the Forum that there is no sufficient ground for review, the Forum shall reject such review application:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

(4) When the Forum is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for.

5. As per Regulation 19, cited above, the complainant in order to succeed in Review application should show:-

a) Discovery of new and important matter or evidence,

b) Some mistake or error apparent from the face of record

This requirement is in consonance with the order XLVII of Civil Procedure Code.

6. The Forum perused various judgments delivered by the Hon'ble Supreme Court of India and other Courts on this subject.

7. In one of the recent orders, the Hon'ble Supreme Court, on 18th August, 2022, in CIVIL APPEALS NO. 5503-04 OF 2022 ARISING OUT OF PETITIONS titled S. MADHUSUDHAN REDDY Versus V. NARAYANA REDDY AND OTHERS, examined the relevant provisions of law that governs review jurisdiction as follows:

- Section 114 of the CPC which is the substantive provision, deals with the scope of review and states as follows:

"**Review**:- Subject as aforesaid, any person considering himself aggrieved:-

- by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred;
- by a decree or order from which no appeal is allowed by this Code; or
- by a decision on a reference from a Court of Small Causes, may apply
- for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit."

- The grounds available for filing a review application against a judgment have been set out in Order XLVII of the CPC in the following words:

"**1. Application for review of judgment** - (1) Any person considering himself aggrieved -

- by a decree or order from which an appeal is allowed, but from which noappeal has been preferred,
- by a decree or order from which no appeal is allowed, or
- by a decision on a reference from a Court of Small Causes,

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.

(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.

1[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.] "

- A glance at the aforesaid provisions makes it clear that a review application would be maintainable on (i) discovery of new and important matters or evidence which, after exercise of due diligence, were not within the knowledge of the applicant or could not be produced by him when the decree was passed or the order made; (ii) on account of some mistake or error apparent on the face of the record; or (iii) for any other sufficient reason.

- In ***Col. Avatar Singh Sekhon v. Union of India and Others*** (1980 Supp SCC 562), this Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In *Sow Chandra Kante and Another v. Sheikh Habib* (1975) 1 SCC 674, this Court observed:

'**A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.**' " (emphasis added)

- In ***Parsion Devi and Others v. Sumitri Devi and Others*** (1997) 8 SCC 715, stating that an error that is not self- evident and the one that has to be detected by the process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise the powers of review, this Court held asunder:

"7. It is well settled that review proceedings have to be strictly confined to the ambitand scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. v. Govt. of A.P.* 1964 SCR (5) 174, this Court opined:

'11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involveany 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 characterized 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.*'

- Again, in *Meera Bhanja v. Nirmala Kumari Choudhury* (1995) 1 SCC 170 while quoting with approval a passage from *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (1979) 4 SCC 389 this Court once again held that 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.

- **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 toexercise its power of review under Order 47 Rule 1 CPC. In exercise of this 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'".** *[emphasis added]*

- The error referred to under the Rule, must be apparent on the faceof the record and not one which has to be searched out.

- It is also settled law that in exercise of review jurisdiction, the Court cannot reappreciate the evidence to arrive at a different conclusion even if two views are possible in a matter. In ***Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. and Others*** (2005) 6 SCC 651, this Court observed as follows:

"10 **In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible.** Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition.

The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. **To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."** *(emphasis added)*

- Under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power which enables the Superior Court to correct errors committed by a subordinate Court. This point has been elucidated in ***Jain Studios Ltd. V. Shin Satellite Public Co. Ltd.*** (2006) 5 SCC 501 where it was held thus:

"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter.

It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. **Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."** *(emphasis added)*

- After discussing a series of decisions on review jurisdiction in ***Kamlesh Verma v. Mayawati and Others*** (2013) 8 SCC 320, this Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below:

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

- When the review will be maintainable:
- Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- Mistake or error apparent on the face of the record;
- Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in Chajju Ram vs. Neki, AIR 1922 PC 112 andapproved by this Court in *Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulose Athanasius & Ors.* 1955 SCR 520 to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.*(2013) 8 SCC 337.,

- When the review will not be maintainable: -

- A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- Minor mistakes of inconsequential import.
- Review proceedings cannot be equated with the original hearing of the case.
- Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.
- The mere possibility of two views on the subject cannot be a ground for review. (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

8. It can be seen that the substance of OP's pleading is that after the final order of the Forum, they received a representation from the owner/landlord of the premises namely Veena Rani. Veena Rani in her presentation has submitted that Priyanka Khullar is not in valid possession of the property. Accordingly, the order for restoration needs to be reviewed.

9. The application of Priyanka Khullar was allowed on the basis of relevant documents placed on record and relying upon ruling of Hon'ble Allahabad High Court in writ C no. 5548 of 2024 in the matter of Dr. Ashok Sharma and others Vs. State of UP and four others.

10. The review application of OP is not maintainable on the following grounds:-

a) OP before filing this review petition has already complied with the orders of the Forum dated 27.05.2024, which is clearly admitted by OP in their review application that they have restored the electricity supply.

b) Veena Rani, the owner/landlady, did not appear before the Forum to plead that the lease deed submitted by OP was false. She did not submit any eviction order passed against the tenant. No evidence was produced that the possession of property was transferred not as per lease deed but as a collateral security to secure a loan taken by Veena Rani.

c) That Hon'ble Supreme Court of India in the Judgment of Dilip (Dead) Through Lrs. Vs. Satish & Others in Criminal Appeal no. 810/2022 has held that, "**it is now well settled proposition of law that electricity is basic amenity of which a person cannot be deprived. Electricity cannot be declined to a tenant on the ground of failure/refusal of the landlord to issue no objection certificate.**"

d) Hon'ble High court of Delhi, in the matter of Sudharshan Kumar Sharma & ANr. Vs. State of NCT of Delhi and Ors. has held that, **"there is no gainsaying that electricity is an essential service, of which a person cannot be deprived without cogent, lawful reason. It is well-settled that even if disputes exist as to ownership of the property at which an electricity connection is sought, the concerned authorities cannot deprive the legal occupant thereof by insisting than an NOC be furnished from others who also claim to be owners.**

11. In view of the above examination of Review Jurisdiction and the conclusions drawn, it can be said that there is no ground available in the present Review Petition. In the guise of 'Review', we cannot entertain appeal against earlier order of the Forum.

Hence the review, being devoid of merit as per Regulation concerned, is not maintainable and is accordingly, dismissed.

No order as to the cost. Both the parties should be informed accordingly. Proceedings closed.

(P.K SINGH)
CHAIRMAN

(S.R. KHAN)
MEMBER-TECH

(P.K.AGRAWAL)
MEMBER-LEGAL

(NISHAT AHMAD ALVI)
MEMBER-CRM

(H.S. SOHAL)
MEMBER