Chapter 1

Preface

1.1 Introduction

Review is a judicial re-examination of a case by the same court which gave the order or judgment and done by an aggrieved party to select his or her case for consideration. A review is not a re-hearing of a case. It is only available in certain special circumstances, namely, where some relevant evidence has been discovered which could not, in spite of due diligence, have been known to the party or been produced at the time of hearing or the court has overlooked some material question of fact or law which would have a bearing on the decision or there is otherwise some apparent mistake or error on the face of the record. The right of review is like a right of appeal, a substantive right and it is not available unless it is expressly conferred by statute. The review jurisdiction is substantially and materially different from the appellate jurisdiction, because it can be only utilized on the specific grounds. A power of review should not be likened with the appellate power which enables an Appellate Court to correct all errors committed by the subordinate court. In other words, it is beyond dispute that a review cannot be equated with the original hearing of the case, and finality of the judgment by a competent court cannot be permitted to be reopened or reconsidered, unless the earlier judicial view is manifestly wrong. A review is not an appeal in disguise. It is not because a conclusion is wrong but because something obvious has been overlooked, some important aspect of the matter has not been considered that a review petition would lie. While appeals are as of right, the provision with regard to review is in the nature of a power given to the court to alter or to correct its order or judgment; under certain circumstances. The power of review is more in the nature of an enabling provision. The scope, extent, manner and forum of

review is circumscribed by the provision of statute which confers upon the litigants the right of review.

1.2 What is review

Stated simply, review means to reconsider, to look again or to re-examine. In legal parlance, it is a judicial re-examination of a case by the same Court and by the same Judge[1]. In review, a judge, who has disposed of the matter reviews an earlier order passed by him in certain specified and prescribed circumstances. The normal principle of law is that once a judgment is pronounced or order is made, the court becomes *functus officio*. Such judgment or order is final and it cannot be altered or changed. The decision cannot be re-opened and the matter cannot be re-heard by a new Judge. As a general rule, once an order has been passed by a court a review of such must be subject to the rules and cannot be lightly entertained. Order 47 of The Code of Civil Procedure visualized the review jurisdiction and also prescribe the conditions and limitation for review. A review of a judgment is a serious step and reluctant resort to it is called for only where a glaring omission, patent mistake or like grave error has crept earlier by judicial fallibility. It is not possible simply in the interest of justice. The power of review is not an inherent power and must be conferred by law expressly or by necessary implication, except in the exceptional circumstances of an order passed inadvertently or obtained by practicing fraud or misrepresentation in which case the court can recall its own order.

[1] C. K. Takwani, *Civil Procedure*, 5th ed. (Lucknow: Eastern Book Company 2003), p.381.

Chapter 2

How review is filed

2.1 Who may apply for review

Any person aggrieved by a decree or order or decision and 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 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 review of judgment to the Court which passed the decree or made the order.

A 'person aggrieved' means a person who has suffered a legal grievance or against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. The expression "person aggrieved" denotes an elastic, and to some extent, an illusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. A person aggrieved has been understood to mean one who has a genuine grievance because an order has been made which prejudicially affects his interests[2]. The concept of "person aggrieved" varies according to the context, purpose and provisions of the statute. However leniently one may construe the expression "party aggrieved", a person not affected directly and immediately cannot be so considered, otherwise an interpretation of service rules and regulations may affect several members and they will also be considered 'persons aggrieved'. A person who is neither a party to the proceedings nor a decree or order binds him, cannot apply for review as the decree or order does not adversely or prejudicially affect him. But if third party is affected or prejudiced by a judgment or order, he can seek review of such order.

[2] *Ibid*, p.384.

Again, a person necessary party to the suit and yet not joined and the order passed in such suit affects him, he may apply for review. Application by a stranger to set aside an *ex parte* decree on the ground of fraud and collusion is competent for review if he is vitally interested in the subject matter. A review application in a representative suit cannot be filed by a person who is not a party to the suit. A party to suit as plaintiff and party to appeal as respondent is competent to file review against judgment which was incorrect on the face of it. Non filling of appeal against judgment and decree of Trial Court would not deprive such plaintiff to file review application. Any person considering himself aggrieved from a decree or order from which an appeal is allowed, but no appeal has been preferred or where no such appeal is allowed by the court 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 there on as it thinks fit.

2.2 When review petition is filed

A review petition is maintainable in the following cases:

(a) Cases in which appeal is allowed but not preferred- A review petition is maintainable in cases where appeal is provided but no such appeal is preferred by the aggrieved party. The fact that an order is subject to appeal is no ground to reject an application for review. An application for review can be presented so long as no appeal is preferred against the order. But if before the making of an application for review, an appeal from the decree sought to be reviewed has already been filed and pending, the court has no jurisdiction to entertain an application for review[3]. Likewise, where an appeal is preferred and is disposed of, no review would lie against the decision of the lower court. But if an application for review is preferred first and then the appeal is filed, the jurisdiction of the court to deal with and decide the review petition is not affected. The words "from which an appeal is allowed" should be construed liberally keeping in the mind the underlying object of the provision that before making a review application, no

[3] *Ibid*, p. 386.

superior court has been moved for getting the selfsame relief, so that for one and the same relief two parallel proceeding before two forums are taken. If review is granted before disposal of the appeal, the decree or order ceases to exist and the appeal will not remain. Conversely, if appeal is decided on merits before an application for is heard, such petition becomes in fructuous and is liable to be dismissed.

(b) Cases in which no appeal is allowed- A decree or order from which no appeal lies is open to review. Hence, an application for review against a decree passed by a Court of Small Causes is competent. In cases where no appeal can be preferred only in those matters an application for review can be applied. Where an application for appeal is dismissed on the ground that it was incompetent or was time-barred the provision of review will not applied. An application for review will be granted only in those cases in which appeal is not allowed.

(c) Decision on reference from Court of Small Causes- The Code of Civil Procedure 1908 allows a review of a judgment on a reference from a Court of Small Causes.

2.3 Notice to the opposite party

A review may be grant after previous notice to the opposite side and also to give them a chance of hearing. Where no notice was served on petitioner before passing an order in review adversely affecting interests of petitioner the order was contrary to specific provisions of law and therefore, illegal. A notice of an application by the plaintiff for review of an order passed in the suit must be served on all the defendants and not merely on the opposing defendants who had appeared when the decree or order sought to be reviewed was passed. A *pro forma* defendant who has not taken any interest in the litigation, against whom proceedings have been *ex parte* throughout and whose interest has been sufficiently guarded by the plaintiff is not an “opposite party”, and no notice is required to give him. Similarly where the review sought is in respect of an order dismissing an appeal in a summary manner, no notice is necessary to the respondent.

Chapter 3

Entertaining review petition

3.1 Power of Court to take review

Review is reconsideration of the same subject matter by the same Court and by the same Judge. If the Judge who has decided the matter is available he alone has jurisdiction to consider the case, and review the earlier order passed by him. He is best suited to remove any mistake or error apparent on the face of his own order. Moreover, he alone will be able to remember what was earlier argued before him and what was not argued. The law, therefore, insists that if he is available, he alone should hear the review petition. There may, however, be situations wherein this course is not possible. If the Judge who passed the decree is transferred or death or such other unexpected or unavoidable causes might prevent the Judge who passed the order from reviewing it. Such exceptional cases are allowed only if an application for review is filled on the ground of discovery of some "new and important matter of evidence" or the existence of a "clerical or arithmetical mistake or error apparent on the face of the decree" then the application may be filled before the successor of the Judge who passed the previous order, but if the application is not filled on either of these two grounds, then the application can be dealt with by the successor Judge only if the application was filled before the very Judge who passed the decree or order and notice was issued by him. It is to be noted that except for discovery of new and important matter of evidence or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, an application for review can only be made to the Judge who passed the decree or made the order sought to be reviewed[4]. Therefore, an application for review based on an error apparent on the face of the decree can be presented to the

[4] Shaukat Mahmood, *The Law of Civil Procedure*, 7th ed. (Lahore: Legal Research Centre 2003), p. 3270.

successor of the Judge who passed the decree, but one based on error apparent on the face of the record, but not on the face of the decree can only be made to the Judge who passed the decree. An error of law on the face of the record does not entitle a party to apply for review to the successor of the Judge before whom the application was originally made. If an application for review not covered by the grounds mentioned following is disposed of by the successor Judge then the assumption of jurisdiction by the successor Judge is illegal. Where, however, an application which does not lie before the successor Judge is entertained by him without any objection being raised by the other party and the case is dealt with on merits, it is not open to a party in appeal to contest the validity of the order of the lower court on the ground that the application should not entertained by the succeeding Judge. A review for supposed error of judgment or on the ground that an order was passed in the absence of or without notice to a party or for review of compromise decree against minor without leave or for non-consideration of a document must be made to Judge who passed the decree or order. A Court determining an application for review is not necessarily confined to the grounds upon which the review is granted. It is only reasonable that considerable latitude should be allowed in the matter, but where a review is granted upon one ground and then is argued upon a totally distinct and unconnected ground in a case where the actual officer who heard the review would not have authority to admit the review upon the ground upon which it was argued, he being a successor in office to the Judge who admitted the application for review, the order on review is without jurisdiction.

3.2 Power of Court to hear review

The power of review is not an inherent power. It must be conferred by law either expressly or by necessary implication. If there is no power of review, the order cannot be reviewed. One Judge cannot set aside an order by another Judge of the same Court although it may be wrong. If a review application is presented before a wrong court it has inherent power to return it for presentation to the proper court. Where two Judges of High Court Bench who had earlier heard the petition and authored the judgment under review, being available, review petition was to be

heard by the same Bench in absence of any disability or disqualification of any Judge to hear the petition. Where the judgment or decree is passed by two Judges, but when the review application comes up one of them had been appointed in the Supreme Court, or resigned from his office, was absent on leave this precluding him from considering the decree or order for a period of six months from the date of the application for review, the other Judge is competent to the application for review. High Court, in exercise of its Constitutional jurisdiction can press into service the provision of order 47 and if the Judges of a Bench who decided a case are not available to perform their duties as Judges, for a period of six months next after the filling of a review petition, though they may remain the Judges of the court concerned, another Bench comprising Judges who were not party to the judgment can hear and dispose of a review petition arising from the above judgment. Where the Judge or Judges who passed the decree or made the order, continues or continue attached to the court and is not or are not precluded by absence or other cause for a period of six months next after the application for review, such Judge or Judges or any of them shall hear the review and no other Judges of the court[5].

It cannot be treated as universal that no point can be raised in review which has already been discussed and decided in the original hearing or that no new point which has not been raised in the appeal can be argued in the review. The court is to see whether any evident error or omission needs correction or is otherwise requisite for ends of justice. When a review is granted on a particular ground, court has discretion to rehear the whole case if it thinks necessary. The power of the court is not restricted to the particular ground on which review is granted. The court has jurisdiction to rehear the entire case or part of it. Unless review is provided by a statute a court cannot review its own judgment except in very exceptional circumstances like order passed inadvertently or obtained by false representation. A Judge may review a judgment delivered by him at a time when he had no jurisdiction, and on such review give a second judgment. It is however, the duty of the court to correct grave and palpable errors committed by it.

[5] *Ibid*, p. 3275.

Chapter 4

Necessity of review

4.1 Why review is prayed for

The necessity of review lies in to the correction of miscarriage of justice. The object of review is neither to a court to re-hear the matter or write a second judgment or to give a second innings to the party who has lost the battle because of his negligence or indifference. The general principle is that in discharging the judicial function, the court has the duty of resolving issues of law properly brought before it and once it is done the finality is reached and judgment can be reviewed only on certain laid down principles *Ekushey Television Ltd. v. Chowdhury Mahmood Hasan*[6]. The court has got the liberty to commit mistake in construing a document and the mistake is not amenable to review unless it comes within the purview of review. The review may be granted only under specific circumstances to meet certain specific situations and not for re-opening the order or decree on any pretext. It is allowed only to correct an evident error or omission. The party asking for a new trial must show that there was no remissness on his part in adducing all possible evidence at the trial. An application for review on the ground of discovery of fresh evidence ought to be refused when such evidence could have been produced if reasonable care and diligence had been exercised. The question whether in the discovery of a new and important matter of evidence there was diligence on the part of the party concerned is essentially a question of fact. Therefore it must be proved by producing, strong evidence of diligence in the matter. Where there is no statement in a petition that the plaintiffs were diligent all along in prosecuting their suit and that the mistake could not be discovered in spite of the exercise of such diligence which revealed itself to them at a particular date, review cannot be granted in that case. In review material error manifest on

[6] 55 (2004) DLR (AD), 26.

the face of the record of the earlier order resulting in miscarriage of justice must be shown. Unless a prayer for review is based on any of the grounds mentioned in the rule of review, the court will not sit on the matter again for re-hearing which is already concluded by decision even if that decision be erroneous. Review is not intended to empower a court to correct a mistaken view of law taken in its own judgment and order after it has been delivered and signed; it is only a clerical mistake or mistake apparent on the face of the record that can be corrected by the court and this does not include the correction of any erroneous view of law taken by court. But where an erroneous decision was given without adverting to the provision of law bearing on it, the review application is maintainable.

The remedy of review, which is a reconsideration of the judgment by the same court and by the same Judge, has been borrowed from the courts of equity. The concept was known to Common Law. The remedy has a remarkable resemblance to a writ of Error. The basic philosophy inherent in the recognition of the doctrine of review is acceptance of human fallibility. If there is an error due to human failing, it cannot be permitted to perpetuate and to defeat justice. Such mistakes or errors must be corrected to prevent miscarriage of justice. Justice is above all. It is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can come in its way. The law has to be bend before justice.

4.2 How review is prepared

An application for review is prepared into the following three stages:

(a) First stage

An application for review commences ordinarily with an ex parte application by the aggrieved party. The court may reject it at once if there is no sufficient ground or may issue rule calling upon the opposite party to show cause why review should not be granted.

(b) Second stage

The application for review shall then be heard by the same court and by the same Judge who passed the decree or made the order, unless he is no longer attached to

the court, or he is precluded from hearing it by absence or other cause for a period of six months after the application. If the rule is discharged, the case ends and the application will be rejected. If on the other hand, the rule is made absolute, the application will be granted for re-hearing of the matter.

(c) Third stage

In the third stage, the matter will be reheard on merits by the court either at once or at any time fixed by it. After rehearing the case, the court may either confirm the original decree or vary it.

In preparing a case for review the court looks whether the case presents sufficient issues of review. If the court grants review the parties will be permitted to file brief on the merits. The brief on the merits is the document submitted after review is granted in which the party explains the court how and why the court's disposition was erroneous. The court may specify which issues should be briefed and argued and no additional issues can be raised which have been previously argued[7].

[7] http://en.wikipedia.org/wiki/effectofreviewinacivilsuit (24th February 2010).

Chapter 5

Grounds of review

5.1 Discovery of new and important matter of evidence

The discovery of new and important matter of evidence is a ground for review application which should be considered with great caution and should not be granted very lightly. An applicant should show that such evidence was available and of undoubted character and it was so material that its absence might cause a miscarriage of justice and that it could not with reasonable care and diligence have been brought forward at the time of the decree. The new and important evidence sought to be produced should be in existence at the time when the decree sought to be reviewed was passed. It should have been discovered by the party applying for review and not by court whose order is sought to be reviewed. To succeed in an application for review, it is not enough to show that there is discovery of new and important matter or evidence which the applicant alleged was not within his knowledge or could not be adduced by him when the decree or order was made. The new evidence must be such as is presumably to be believed and that if adduced it might possibly have altered the judgment. The discovery of a document containing an admission of liability by the defendant would be a good ground for review. An application for review should be refused when such evidence could have been produced had reasonable care and diligence been exercised.

Review is allowed when a very old document had recently been discovered, which apparently was not within the knowledge of the party seeking review. Right of review can be exercise only in case of excusable failure on the part of the applicant to bring to the notice of the court new and important matters. Unless the diligence is pleaded, review on the ground of discovery of new and important evidence is not permissible. Absence of negligence on the part of the applicant is to be strictly proved. The party must show that there was no remiss on

his part in adducing all possible evidence at the trial. Where it lasted for three years, an application for review of the judgment was refused on the ground that no sufficient cause was shown as to why the new evidence was not produced at the relevant time. The question of due diligence in procuring and producing fresh evidence is a question of fact and a finding as to the existence of due diligence of the courts below will not be interfered with in revision. Where a review is sought on the ground of discovery of fresh evidence, the court should exercise utmost care in granting it. It is very easy for a party who has lost the case to see the weak points in his case and he would be tempered to try to fill in gaps by procuring evidence to cover up the weakness and put a different complexion upon the weak part. The discovery must be by the party and not by court. Such evidence must have a material bearing on the merits of the case *Halima Jaman v. Bangladesh*[8] and must be such as is presumably to be believed and if adduced, it would be conclusive. The court must come to a clear finding that there was discovery of new and important matter which after due diligence was not within the knowledge of the petitioner. The discovery must be one made since the decree or order sought to be reviewed was passed. An error of law is not such discovery. Discovery must be of evidence or other matter in the nature of evidence and, therefore, review cannot be granted on the ground of new point of law or authorities which show that the decision was not correct. Nor can it be granted on the happening of subsequent event or law.

The underlying object is neither to enable the court to write a second judgment nor to give a second innings to the party who has lost the case because of his negligence or indifference. Therefore, a party seeking review must show that there was no negligence on his part. But mere importance of evidence is not sufficient ground for review. Moreover it must be legal and admissible evidence. Photostat copies cannot be produced when neither their originals nor certified copies were available. Where a decree for restitution of conjugal rights was passed and subsequently it was discovered that the parties were related as cousins, such relationship amongst Hindus rendered the marriage a nullity, it was held that there was a good ground for review.

[8] 50 (1999) DLR (AD), 352.

5.2 Mistake or error apparent on the face of the record

Another ground for review is a mistake or an error apparent on the face of the record. What is an error apparent on the face of the record cannot be defined preciously or exhaustively, and it should be determined judicially on the facts of each case. Such error may be one of fact or of law. However, no error can be said to be an error apparent on the face of the record if it is not self-evident and requires an examination or argument to establish it *Md.Siddique v. Samsul Haque*[9]. In other words, an error cannot be said to be an on the face of the record where one has to travel beyond the record to see if the judgment is correct or not. Omission to place relevant decision at the hearing of the suit or appeal is not a mistake or error apparent on the face of the record *Akbar Hossain v. Agrani Bank*[10]. An error which has to be established by a long-drawn-out process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. If any court applies its mind to a particular fact or law and then comes to a wrong conclusion after conscious reasoning, it can never be contended that the error is one apparent on the face of record and can be corrected by it. Correction of such mistaken conclusion does not come within the ambit or purview of review. A mistake of a party on perception of a fact or law is no ground for review. "Error apparent on the face of the record" is an error which can be seen by a mere perusal of the record without reference to any other matter. Power of review is confined only to correct errors apparent on the face of the record. These words cannot be given so wide a scope as to bring within its fold such errors as well which should have been pointed out at the time of hearing. If that be allowed there will be no finality attached to the judgment or orders. Where it was contented that the Court in deciding the dues in Bangladesh currency adopted a rate of conversion from dollar contrary to the provisions of art.28 of P.O. 128 of 1972, the Appellate Division rejected the review petition stating, "the matter of rate of conversion was not argued at the time of hearing of these appeals. The matter cannot be decided without hearing the parties afresh as to the implication of Article 28. This Court's judgment is therefore not amenable

[9] 8 BLC, 688.
[10] 54 (2003) DLR (AD), 21.

to review on this score. It will be an appeal in disguise, if a fresh argument on the Article is entertained" *BSRS v. Hoque Brothers*[11]. A review for mistake or error apparent on the face of the record is permissible in the following cases:

(a) Where a judgment is passed without notice to the parties or in a form not legally correct.

(b) Failure to apply the law of limitation in the facts of a case.

(c) Where a judgment proceeds on an erroneous assumption as to a material fact.

(d) Where an adjudication is annulled in the absence of a prayer by either party.

(e) Decision given without taking into consideration that an applicable law was amended retrospectively.

(f) Where the Court has passed an order without jurisdiction.

(g) Where the Court rejected a plaint on the authority of an overruled judgment.

(h) Failure in effectively dealing with and determining an important issue on which the plaintiff's title and maintainability of the suit depended.

(i) Failure due to patent and glaring mistake in awarding interest is instances of error.

(j) Where the Court decided against a party on matter not in issue.

(k) Where the Court does not consider the entire contents of an exhibit which was a material document.

(l) Where the reference was made by the Court under a wrong para of the agreement to refer to arbitration.

On the other hand, the followings are not considered to be error apparent on the face of the record:

(a) Judgment proceeding on an incorrect proposition of law.

(b) Mistake in interpreting law correctly.

(c) Reliance on a ruling subsequently modified or reversed.

(d) Erroneous decision on merits and view of law.

(e) Different conclusion could have been reached.

[11] 46 (1995) DLR (AD), 39.

5.3 Other sufficient reason

The last ground for review is any other sufficient reason. The expression "any other sufficient reason" have been interpreted to mean "a reason sufficient on grounds at least analogous to those specified immediately previously" which means excusable failure to bring to the notice of the court new and important matters, or error apparent on the face of the record.

The following have been held to be sufficient reasons for review:

(a) Where the decree or order has been passed under a misapprehension of the true state of the circumstances.

(b) Where a party has not had a fair opportunity of producing his evidence.

(c) Where the court has failed to consider important facts, issue or evidence.

(d) Where the court has omitted to notice certain provisions of the Code.

(e) Where a case is disposed of erroneous interpretation or application of law.

(f) Where sufficient cause is shown for default of appearance.

(g) A ground which goes to the root of the matter and affect inherent jurisdiction of the Court.

(h) In case of a dismissal of a suit for non-prosecution on account of non-compliance of an order for discovery.

There are some other grounds in which review may be granted:

5.3.1 Compromised decree

Where both State counsel and counsel for petitioners agreed regarding modification of order under review, review application was accepted to the extend that case be sent to subordinate court for fresh decision in accordance with law after hearing the parties. Where facts are brought to the notice of the court showing that a compromise ought to be treated as a nullity, an application for review is a proper mode of raising the question whether the compromise should be treated as a nullity or not. Thus a decree may be challenged on the ground that the decree did not bind the plaintiffs who were not consenting parties, and that the court by dismissing the suit on no material on record had acted without jurisdiction. A decree based on a compromise entered into by an agent might be

set aside on the ground that the agent had no power to do so. But mere failure on the part of counsel to disclose that he was holding no authority from his client to enter into a compromise on his behalf could hardly provide ground for review of consent order based on compromise. Where a decree for specific performance was passed on the basis of a compromise between the vendor and vendee, a subsequent vendee *pendente lite* who made party to the compromise may apply for the review of judgment on the ground that the decision was given in his absence. But the court should not allow a compromise to be challenged where a party to it has not been mislead and is trying to get out of his commitment by taking false pleas. An application for review may be made when the compromised decree is sought to be clerical error or when it does not represent what that court intended to decide.

5.3.2 Ex parte decree

A review can be filed against a *ex parte* decree *Wasiq Khan v. Sabiq Khan*[12]. The rule applies to all cases whether they are disposed of in the presence of the parties or ex parte in the absence of the defendants. A dismissal for default other than the failure to appear is open to review. Where the default is not intentional and the party has made genuine efforts or taken reasonable precautions to be present at the hearing, a very strict view should not be taken. The appellants had to travel from one end of the country to the other. Where the dismissal is for default of appearance, the failure to apply will not bar an application for review.

5.3.3 Review before judgment is written

An order dismissing an appeal even though no formal judgment is written, can be reviewed, if the mistake of law is gross and apparent on the face of the record. The absence of a formal judgment does not bar an applicant from review. Where a statement appears in a judgment of a court that a particular thing happened or did not happened before it, it ought not ordinarily be permitted to be challenged by a party unless both the parties to the litigation agree that the statement is wrong, or the court itself admits that the statement is erroneous. The remedy of a party

[12] 31 (1980) DLR (AD), 876.

aggrieved is by way of review. A judgment which was arrived at in violation of law, or in which a provision of law has overlooked is open to review by the court.

5.3.4 Mistake of Court

Where a party could not comply with an order by an error or negligence of an agency of the court, the may be reviewed. Thus where a respondent in a pre-emption suit was justified in waiting for the copy of the decree to the terms of which he was required to comply with and for which copy he applied promptly. If the copy was supplied after the date prescribed for making the deposit had already expired and it was impossible to comply with its term and thus result was brought about by the negligence or mistake of an agency of the court, this error could be corrected even in exercise of the review jurisdiction. Failure of the court to take into consideration an existing decision of the Supreme Court taking a different or contrary view on a point covered by its judgment would amount to a mistake or error apparent on the face of the record. But a failure to take into consideration a decision of the High Court would not amount to any mistake. Where the petitioners, whose appeal stood dismissed for default as the deficit court-fee was not paid within the time allowed, file an application for review and the application was ultimately allowed on the ground that there was no want of due diligence on the part of the petitioners in paying the deficit court-fee on the memorandum of appeal, the ground is clearly outside the purview of mistake of law or fact and the application for review is allowed.

5.3.5 Review petition by minor

A minor can apply for review of a judgment passed against him on the ground that his guardian has conducted the case with gross negligence. The absence of a provision in the Code empowering the court when passing a decree against a minor to reserve to the minor the right of questioning the decree after attaining majority is not a ground for review of the judgment otherwise properly passed. For an application of review by a minor can be affected if his case is done with gross negligence.

5.3.6 Review before signing of decree

Where in order to be consistent in the decree finally passed, the court has to pass an order, the same relief can be given in a petition put in by way of review. Where in a joint suit for pre-emption by two pre-emptors and subsequently in joint appeal by both pre-emptors, Appellate Court while modifying decree on question of sale price ordered deposit of same by a specified date. One of the pre-emptors filed review application on the ground that other appellant wanted to withdraw from the suit and that he be granted decree for the whole of the land in question and fresh date be fixed for the deposit of the sale price. Review jurisdiction should have been exercised by the Appellate Court and decree passed earlier should have been modified so the name of co-pre-emptor should have been struck off and should have been passed in favour of petitioner alone on payment of total decretal amount. In such eventuality it was necessary to fix fresh period of time to deposit the sale price and also to amend and modify the decree sheet[13].

A review may not be granted in the following cases:

(a) Where an objection is taken to limitation and jurisdiction although there was no inherent want of jurisdiction in the court.

(b) Where there has been a failure to frame proper issue.

(c) Where there has been absence of the party on the date of the hearing.

(d) Where the prayer is to review the whole evidence in the case and the conclusion arrived at by a process of conscientious reasoning.

(e) Where there has been delay in pronouncing the judgment.

(f) Where an authority is sought to be produced which was not cited during the proceeding.

[13] Shaukat Mahmood, *ibid*, p. 3280.

Chapter 6

Rejection of review

6.1 Application for review where rejected

A court can reject an application for a review where there is no sufficient ground for review and where no previous notice has been delivered to the opposite-party, to enable him to appear and be heard in support of the decree or order for which review is prayed and the court can also reject an application for review where the review is on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation. If a court thinks there is no sufficient ground on which review may be taken it may reject it at once, because the grounds are really not sufficient. A previous notice to opposite party by the court also gives them a chance of rehearing and where no notice is served on petitioner before passing an order in review adversely affecting the interest of the petitioner and therefore, is illegal. No review can be granted without notice which is imperative. A review application may be summarily rejected and issue of notice does not preclude summary rejection. Where no notice is issued to the opposite party by the Small Causes Court before it passed an order reviewing its previous order, there is no bar to the opposite party as against the final order. The whole is before the High Court, and if it is found that the order granting review was not according with law, the High Court can reject the order.

Thus where a suit was dismissed on two grounds; namely (a) for want of notice as required by law; and (b) the illegitimacy of the plaintiff; and a review was applied for on the ground of legitimacy of the plaintiff, it was refused on the ground that the was, in any case, required to be dismissed on the ground of want

of notice. Discovery of new matter and evidence stated therein, must be satisfying and after exercising due diligence it should be bought otherwise the court can reject the application for review. Strict proof which means where any relevant evidence that produces a conviction in the mind about the existence of a fact or correctness of an allegation, should be placed in the review. An affidavit placed on record in accordance with the requirements of the rules, would be sufficient, under the circumstances of the case, to produce conviction in favour of correctness of the allegation. Where a court grants a review without calling for strict proof of the allegation is without jurisdiction and is a ground for rejection. Where an application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected. Where there is a majority, the decision shall be according to the opinion of the majority. The order granting a review only holds the judgment in suspension while rejection for review strictly holds the judgment. The death of a party does not cause the suit or appeal to abate. The happening of a subsequent event is not a valid ground for review. Therefore, a compromise between the parties subsequent to the decision can be rejected. A review can also cannot be granted on the ground that the decision is erroneous on the merits or a different view decision of a point of law or fact while disposing of petition or an appeal, review of such judgment or order could not be obtained on the ground that the court took an erroneous view or that another view on reconsideration was possible. An application for review can also be rejected on the ground of discovery of new and important matter of evidence as to a question of fact.

6.2 Order of rejection not appealable

An order of the rejecting the application for review shall not be appealable. The expression “shall not be appealable” clearly means want of any authority or right to hear the appeal or determine and pronounce judgment on appeal.[14] An order refusing an application for review cannot be said to be a judgment and hence no Letters Patent Appeal lies. But an order granting an application for review is

[14] Mahmadul Islam, *The Law of Civil Procedure*, 2nd ed. (Dhaka: Mullick Brothers, 2003). p 1778.

appealable. An order granting review is open to attack on the grounds. But it does not confer an absolute right of appeal against an order of grant of review application. There is no appeal from an order granting a review in cases other than specified in the rule. Therefore an order granting review on the ground that there is an error in the judgment apparent on the face of the record is not appealable. An order granting an application for review made by the first Appellate Court cannot be challenged in a second appeal from the final decision on grounds other than those specified in review. But in an appeal against the decree passed on review the appellate Court has full power to go into the merits of the case and see whether the decree was properly passed. An order granting an application for review may be objected to on the ground that the application was granted without notice to the opposite party without calling for strict proof of the allegations referred to therein, and after the expiration of the period of limitation prescribed therefore and without sufficient cause. This objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit. Where an application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to file and where it is proved to the satisfaction of the court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for rehearing the same. The law of Limitation has to be strictly construed and an application for review cannot be granted when it is barred by limitation. However, where an application is made after the period of limitation, the Appellate Court can look into the sufficiency of the cause alleged for the delay. When an application made beyond the prescribed period is admitted without the court satisfying itself that there is sufficient cause for delay, the court there acts without jurisdiction. No second appeal lies from the order of an Appellate Court, whether it confirms or reverses the order of the court of first instance granting an application for review. A second application for review is maintainable where a previous application for review was made and rejected.

Chapter 7

Limitation in filing review

7.1 Time limit in filing review

Once limitation starts running, nothing can stop it. Appellant having filed review against the decision of First Appellate Court, limitation would not run from the date of decision of application for review. Limitation for review of an order of the High Court begins to run from the date of the order and not from the date of later order of the Supreme Court in the case. The crucial date for determining whether or not the terms are satisfied is the date when the application for review is filed. If on that date no appeal has been filed, it is competent for the court to dispose of the application for review on the merits notwithstanding of the pendency of the appeal subject only to this that if before the application for review is finally decided, the appeal itself has been disposed of, the jurisdiction of the court hearing the review would come to an end. The period of limitation for an application for review of a judgment by a court other than the Supreme Court is thirty days from the date of the decree or order. Where second appeal is filed against the judgment and decree of First Appellate Court, limitation runs from the date when judgment and decree was passed.

Where the case is for review of judgment of High Court in exercise of its original jurisdiction Limitation Act is applicable, whereby application was to be presented within twelve days from the date of decree or order. Application presented after one year and one month was hopelessly time-barred. Even if some new and important evidence had been discovered that would not entitle the party aggrieved to file a review petition according to his convenience and pleasure. The Law of Limitation is to be strictly observed. A review application filed several

months out of time cannot be admitted[15]. Where the petitioner applied for review of an order although the grounds mentioned in his application were not covered by Order 47 and later on sought to get the period spent in prosecuting the review application excluded from the period of limitation for appeal. It was held the time could not be excluded. Where an *ex parte* order was passed by High Court against respondents who were not served, application for recalling the order being competent, period of limitation would be three years as prescribed by Limitation Act. There are certain grounds in which filing of review application has been barred for limitation of period-

7.1.1 Expiry of period of limitation

The law if limitation has to be strictly construed and an application for review cannot be entertained when it is barred by limitation. However, where an application is made after the period of limitation, the appellate Court can look into the sufficiency of the cause alleged for the delay. When an application made beyond the prescribed period is admitted without the court satisfying itself that there is sufficient cause for delay, the court acts without jurisdiction. Pendency of a second appeal is not a sufficient ground for delay. Application to review an order made on an application for a review or a decree or order passed or made on a review shall not be entertained if although it is time barred.

7.1.2 Delay in filing review

Where delay in filing a review petition is not properly explained, it cannot be condoned on vague allegation. Where condonation of delay was prayed for on ground that counsel for petitioner was under erroneous impression with regard to time provided for filing of review application, or on ground of old age and poverty, or on ground of difficulty in construing the statute under which the judgment was given; condonation was refused, as statute was very clear on the point involved. But delay may be condoned where the applicant for review of order though a necessary party was not impleaded in the constitutional petition filed against the

[15] S. C. Sarkar, *The Law of Civil Procedure*, 5th ed. (Calcutta: S. C. Sarkar and Sons Private Ltd), p. 974.

order. Where sufficient cause is shown for delay as where it was alleged that application was returned with objection but it was found that it was not due to any fault of respondent that application was refilled late because office did not officially intimate him either by putting up application on objection list or by sending respondent a note. Application could very well be treated to be within time.

7.1.3 Delay in filing revision

Revision would lie from an order rejecting review application provided order sought to be revised was without jurisdiction or court had failed to exercise jurisdiction vested in it or had acted in exercise of jurisdiction illegally or with material irregularity. If the court refuses to exercise review jurisdiction arbitrarily or on grounds not sustainable in law. Even dismissal of an application for review on merits does not bar the remedy of a party. But if review is granted on grounds not covered by review it is open to the aggrieved party to have it revised by a superior court. Where the District Judge set aside an order passed by him in revisional jurisdiction, the latter order would be treated as an order passed in revision, and no second revision against the order would lie to High Court. Court declined to enter into factual controversy whole hearing review petition against dismissal of review on ground of bar of limitation. Whether or not counsel for petition had acted negligently and was guilty of misconduct was a factual controversy and such vague assertions being not supported of any material on record, could not be sufficient ground for condonation of delay in filing revision.

7.1.4 Time barred decree

Where decree of court was nullity in the eye of law *being coram non judice* and without lawful authority same could be set aside by treating time-barred review application to be for removal of gross illegality. When any order, judgment and decree has been passed apparently without jurisdiction no limitation would run against such order, judgment or decree, same could be set at naught whenever brought to the notice of court. Where the applicant had contended that when his

appeal was dismissed neither he was present in court nor his counsel who had entered appearance, had informed him of fate of his appeal. Such factual position had not been controverted by respondent by filling counter-affidavit[16]. Review petition filed from the date knowledge of dismissal of appeal, was within time. Delay in filling application was condoned by court accepting application of petitioner for codonation of delay. But where the application for review is time-barred it cannot be entertained. Limitation with regard to scope of reviewal power, do not apply to invocation or exercise of power, Civil Procedure Code 1908, treated review application within time and set aside earlier order wherein error was apparent on the face of the record.

7.1.5 Limitation in writ petition

Apart from the High Court's power to correct errors apparent on the face of the record in exercise of its inherent jurisdiction, the High Court has power under the Code to review its own order made in writ jurisdiction in a civil matter. Where a Constitutional petition decided by Division Bench was related to civil matter provisions of C.P.C. relating to review, had not been expected in their application in Constitutional petition. Where High Court while dismissing a petition had applied its mind to relevant facts and circumstances of the case, gave reason in support of conclusions arrived at, their being no error apparent on face of record, or failure to advert to relevant rules while dismissing a writ petition does not warrant exercise of review jurisdiction. The power of High Court to review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it[17]. However, there are definite limits to the exercise of the power of review. It cannot be forgotten that a review is not an appeal in disguise where by an erroneous decision is reheard and corrected. The inherent powers are not to be treated as unlimited or unabridged but they are to be invoked on the grounds analogous to the grounds mentioned for review.

Execution proceedings having already been finalized according to law to the

[16] Shaukat Mahmood, *ibid*, p.3282.
[17] Mahmadul Islam, *ibid*, p.1773.

knowledge and active participation of judgment-debtor, subsequent orders passed by Executing Court reviewing its earlier order and that of revisional authority were unfounded and unfair besides being *coram non judice* and without lawful authority were liable to be set aside in Constitutional petition. Order of High Court declining the said relief to petitioner was illegal and liable to be set aside. Where it is of time barred no writ petition can be filed. To do justice to correct errors court has to be done with specific period.

Chapter 8

Conclusion

The effect of allowing an application for review is to recall the decree or order originally passed and any order made subsequently reversing, modifying or confirming it will be a new decree or order superseding the original one. Effect of review is a satisfaction of a party. The Court is always a legal decision maker by analyzing law. Apparent error if arises in a judgment, the Court on prayer of an aggrieved party may accept review and hear it. The result of which may make the party happy. Effect of review is always justice by consideration. Apparent error in a case may make a party to suffer for it. But the process and effect of review or a second thought can save a party from imminent threat of loss of property or of life. Litigants are justice seekers and if justice seekers find justice duly done the law is used for the welfare of the litigants and the litigants find that law is merciful. If the review is rejected the petitioners finds law to be relentless and also finds that law is bitter, the fear of law and justice in the true sense does not work for a litigants praying for review. As such the effect of review should be soothing.