



Court No.3.

HIGH COURT OF SIKKIM

Record of proceedings

Review Petition No. 02 of 2022

DIVISIONAL FOREST OFFICER (T) & ORS.

.... APPELLANTS

VERSUS

ASHOK TSHERING BHUTIA

.... RESPONDENT

Date: 22.08.2022

CORAM

HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.

For Appellants : Dr. Doma T. Bhutia, Additional Advocate General.
Mr. S.K. Chettri, Government Advocate.
Mr. Shakil Raj Karki, Assistant Government Advocate.

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1. This is a review petition filed under Rule 44 and 45 of the Sikkim High Court (Practice and Procedure) Rules 2011 read with Section 114 and Order 47 of the Code of Civil Procedure, 1908 (CPC) seeking review of the cost imposed upon the appellants vide order dated 10.03.2022. Heard the learned Additional Advocate General. On 02.06.2022 pursuant to the notice issued in the review petition the respondent appeared in person and stated that he had nothing to submit insofar as the review petition is concerned. The respondent is not present today. The review petition is based on three facts stated therein i.e.:-

- (i) That the matter had been fixed on 01.03.2022 for hearing on which date the learned Additional Advocate General was available to argue the matter however, due to unavailability of this bench matter was fixed on 10.03.2022 by the registry without consulting the learned counsel.



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- (ii) The learned Additional Advocate General had been engaged to appear before the Supreme Court on 10.03.2022 and therefore, could not be present before this court on that day and
- (iii) that although, the Reader of this court had been telephonically informed that the appellants would be seeking adjournment, the impugned order dated 10.03.2022 records that the court was not informed.

2. The adjournment sought for by the appellants on 10.03.2022 was therefore, for genuine reasons and circumstances beyond the control of the conducting counsel.

3. The Supreme Court in **S. Madhusudhan Reddy vs. V. Narayana Reddy and Ors**¹ held that the court's jurisdiction of review is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XL VII Rule 1 CPC.

4. Rule 45 of the Sikkim High Court (Practice and Procedure) Rules 2011 provides for review on the ground of discovery of fresh evidence. The learned Additional Advocate General submits that there was error apparent on the face of the record inasmuch as although the matter had been originally listed on 01.03.2022 on

¹ (2022) LiveLaw (SC) 685



which date this bench was not available it failed to consider this fact while passing the impugned order dated 10.03.2022.

5. The record reveals that the registry on 25.02.2022 had written a note in which it was stated that the instant matter will be listed on 10.03.2022 instead of 01.03.2022 and the said fact has been informed to the learned advocate for the appellants as well as the respondent. In view of this fact it is quite certain that information had been given to the parties before listing the matter on 10.03.2022.

6. A perusal of the order dated 10.03.2022 reveals that this court thought it fit to adjourn the case on the request of the learned Assistant Government Advocate to 16.03.2022 after imposing the cost of Rs.7500/- dissatisfied with the adjournment sought on the ground that the learned Additional Advocate General had to go to Delhi for another case and could not appear before this court; further that she herself did not have the brief to prepare for the hearing and that the court was not informed earlier.

7. It is apparent that while passing the order dated 10.03.2022 this court had not considered the fact that although initially the matter had been adjourned to 01.03.2022 because of the unavailability of this bench on that day the matter could not be taken up compelling the registry to have it relisted on 10.03.2022 on which date the learned Additional Advocate General was not available.

8. In view of the same, this court deems it proper to review the order dated 10.03.2022 and reduce the cost imposed from Rs.7500/- to Rs.500/- which shall be deposited within a period of



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one week from today as directed by this court vide order dated
10.03.2022. The review petition is partly allowed and disposed of.

Judge

to/ **Index: yes/No**
Internet: yes/No