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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1.

CR-1469-2025 (O&M)
Date of decision: 15.07.2025

Municipal Corporation, Gurugram

...Petitioner

Versus

Dushyant Kumar and others

...Respondents

2.

RA-RS-14-2025 (O&M) in
RSA-2290-2013
Date of decision: 15.07.2025

Municipal Corporation, Gurugram

...Appellant

Versus

Dushyant Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Kushaldeep Kaur, Advocate and
Mr. Siddhanth Arora, Advocate and
Ms. Sharni Dadhwal, Advocate
for the petitioner-applicant-MC, Gurugram.

Mr. Amit Jain, Advocate for respondent No.1.

Mr. Jagdish Manchanda, Addl. A.G. Haryana
for respondent Nos.2 and 3.

VIKAS BAHL, J. (ORAL)

1. The present order would dispose of two cases, the first being



CR-1469-2025 filed by the Municipal Corporation, Gurugram (defendant No.1 in the main suit) in which challenge is to the order dated 09.01.2025 passed by the Executing Court in Execution No.98 of 2020 titled as "Dushyant Kumar Vs. Municipal Committee, Gurugram and others", whereby the objections filed by the petitioner/defendant No.1 have been dismissed. Second case is Review Application No.14 of 2025 filed in RSA No.2290 of 2013 by the Municipal Corporation, Gurugram (defendant No.1) in which the prayer is for review of judgment and order dated 22.08.2019 (Annexure A-1) passed by the Coordinate Bench of this Court in RSA No.2290 of 2013. In the said review application, application bearing CM-2650-C-2025 has been filed under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay of 1998 days in filing the review application and another application bearing CM-2651-C-2025 has been filed under Order 41 Rule 27 CPC for permission to place on record additional evidence as Annexures A-7 to A-11.

2. Brief and undisputed facts in the present case are that respondent No.1-Dushyant Kumar son of Des Raj (hereinafter to be referred as "the plaintiff") had filed a suit for declaration with permanent and mandatory injunction against the Municipal Council, Gurgaon (review applicant/petitioner/defendant No.1), Deputy Commissioner, Gurgaon and State of Haryana, who were impleaded as defendant Nos.2 and 3 respectively. The said suit was filed on the averments that one Raja Rati Ram son of Lala Munshi Lal Jain was owner of land comprised in khasra Nos.48, 49, 51, 52, 56 and 57 situated in the revenue estate of Hidyatpur Chawani, Tehsil and District Gurgaon and that he had sold a plot measuring



250 square yards out of the said land to the plaintiff vide registered sale deed dated 07.12.1964 for a valuable consideration of Rs.1000/- and that the possession of the suit land was delivered to the plaintiff and since its purchase, the plaintiff was owner in possession of the same. It was further the case of the plaintiff that in the year 2002, he had got prepared a building site plan in conformity with law and bye laws and had requested the officials of defendant No.1 to sanction the said building site plan, however, no action was taken by defendant No.1 even though they were bound to sanction the building plan; and that vide order dated 19.08.2002, defendant No.1/Municipal Council refused to sanction the building plan for baseless reasons. It was further stated by the plaintiff that he had filed an appeal against the order dated 19.08.2002, which was also dismissed on 26.11.2002 and that the said orders were illegal as there was no Town Planning Scheme No.3 as alleged by defendant Nos.1 and 2 and in case there was any such scheme, the same was never implemented, as had been held by various Courts of competent jurisdiction. After sending a legal notice, the suit was filed in which prayer was made that the orders dated 19.08.2002 and 26.11.2002 passed by defendant Nos.1 and 2 respectively be declared as illegal, null and void and direction be given to defendant No.1 to sanction the building site plan in respect of the suit land.

3. The defendants had filed the written statement in which it was submitted that the town planning scheme had been implemented within the stipulated period prescribed under law. It was denied that the suit property had been sold to the plaintiff vide sale deed dated 07.12.1964.

4. The trial Court had framed the following issues in the said



proceedings:-

- “1. Whether Raja Rati was owner of plot in dispute and hold the same to plaintiff vide sale deed dated 7.12.64 as alleged?
OPP
2. Whether plaintiff is owner in possession of suit property described in para no.1 of the plaint?
OPP
3. Whether order dated 19.8.2002 passed by defendant no.1 and order dated 26.11.2002 passed by defendant no.2 are void-incorrect, illegal and liable to be set aside as alleged?
OPP
4. Whether there is no cause of action to file the present suit?
OPD
5. Whether plaintiff is estopped from filing the present suit by his own act and conduct?
OPD
6. Whether plaintiff has no locus standi to file the present suit?
OPD
7. Whether suit is bad for non joinder of parties?
OPD
8. Whether suit has been properly valued for the purpose of court fees ?
OPD
9. Whether the suit property is open space as per TP scheme no.3 of Gurgaon as alleged?
OPD
10. Relief.”

5. Due opportunities were given to both the parties to produce their documents. The plaintiff in addition to the other documents, produced the certified copy of sale deed of the suit property which was duly exhibited as Ex.P10, certified copy of the judgment dated 14.09.1987 as well as other judgments were also duly produced and exhibited on record as Ex.P19, Ex.P21 and Ex.P24 and the order passed by the Deputy Commissioner, Gurugram dated 04.01.1982 was produced and exhibited on record as Ex.P23.



6. The trial Court, after considering all the issues, decreed the suit of the plaintiff and granted the following relief:-

“RELIEF:

32. *In view of my findings on issue no.1 above, suit of the plaintiff is decreed. The impugned orders dated 19.8.2002 and 26.11.2002 passed by defendants are declared illegal, null and void and as a consequential relief defendant no.1 is directed to sanction the site plan of the plaintiff in accordance with provisions of law. The defendants are further directed to remove the construction raised over the suit property during pendency of the suit. Parties are left to bear their own costs. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.*

Announced.

23.11.2010”

7. A perusal of the judgment dated 23.11.2010 would show that in para 16, it was noticed by the trial Court that the defendants had examined six witnesses out of which DW1 Vijender Singh, Assistant Town Planner, Gurgaon had stated that the original drawing of the said Town Planning Scheme No.3 was not available in the office and it was also submitted that the letter of the Haryana Government vide which the said scheme was sanctioned was also not available in the office. Moreover, in his cross-examination, he had stated that he had no knowledge about the implementation of the Town Planning Scheme No.3. Para 16 of the said judgment which records the evidence of the said DW1 to the said effect is reproduced hereinbelow:-

“16. On the other hand, defendants examined six witnesses. DWI Vijender Singh, Assistant Town Planner, Gurgaon



deposed that the Government of Haryana has sanctioned Town Planning Scheme No.3. He further stated that the original drawing of said scheme is not available in the office. He also submitted that the letter of Haryana Government vide which the said scheme was sanctioned is also not available in the office. In his cross examination he stated that he has no knowledge about implementation of Town Planning Scheme no.3.”

8. In para 24 of the judgment, it was observed by the trial Court that Raja Rati Ram was owner in possession of the suit property and that he had sold the suit property to the plaintiff vide Ex.P10, which had been duly proved on record and that as far as the plea of the defendants regarding implementation of Town Planning Scheme No.3 was concerned, reference was made to the judgment passed by the First Appellate Court in Civil Appeal No.34 of 25.09.1986 titled as Municipal Committee Vs. Sharu Ram (Ex.P19) in which it had been observed that the Town Planning Scheme No.3 was never acted upon or enforced by the Municipal Committee and that the said judgment had become final as no further appeal was filed. In para 25 of the judgment dated 23.11.2010, it was further observed that since the plaintiff was the owner of the property in question, thus, the reason given by defendant Nos.1 and 2 for rejecting the plan of the plaintiff for construction was not legal and thus, the orders were liable to be set aside and the plaintiff was entitled to a decree for mandatory injunction. Paras 24 and 26 of the said judgment are reproduced hereinbelow:-

“24. I have given thoughtful consideration to the arguments advanced by the both the sides. At the outset I may observe that it is admitted case of the parties that Raja Rati Ram was



owner in possession of suit property It is also pertinent to note that as per sale deed of suit property which is Ex. P10 which is duly proved by the plaintiff and PW4 Bhupender Singh, PW5 Satya Narain Aggarwal, PW6 Harish Kumar and PW7 B.B.Sharma, Advocate the plaintiff purchased the suit property from Raja Rati Ram. It is further noteworthy that the plea of defendants regarding implementation of Town Planning Scheme no.3 has already been rejected by Ld. First Appellate Court in Civil Appeal bearing no. 34 of 25.9.1986 titled as Municipal Committee Vs. Sharu Ram vide Judgment Ex. P19 in which it was observed that 'the Town Planning Scheme no.3 was never acted upon or enforced by the Municipal Committee'. It is also relevant to note that in that case also the Municipal Committee had taken the plea of suit property being reserved for open space in the Town Planning Scheme no.3 It is further pertinent to mention that the above-said judgment vide which averment of Municipal Committee regarding implementation of Town Planning Scheme no.3 was rejected has become final as no further appeal was filed by Municipal Committee against the same. In given circumstances when the plea of Municipal Committee with respect to implementation of Town Planning Scheme no.3 has already been considered and rejected by competent court and said decision has attained finality, the Judgment Ex.P19 is relevant for just decision of this case u/s 13 of Indian Evidence Act. In taking this view I am fortified by law laid down in Tirumala Tirupati Devasthanams Vs. K.M.Krishnaiah (Supra) and S.Govindarasu Udayar Vs. Pattu & Others (Supra). Consequently the defendants evidence regarding sanction of Town Planning Scheme no.3 and its subsequent implementation is not reliable. Thus the plaintiff is owner in possession of suit property by virtue of sale deed Ex P10.



25. xxx

26. *Before parting with the discussion on the issue I may also observe that during the pendency of the suit the plaintiff filed an application under order 39 rule 1 & 2 CPC seeking to restrain the defendants from ousting the plaintiff from the suit property by raising construction. At that time the Ld. Counsel for the defendants has given oral undertaking that in case plaintiff succeeds in the suit the construction of boundary walls which was being raised by the defendants will be removed. Therefore, in given scenario and in view of findings given above, the defendants are also liable to remove the construction raised by them at the site during pendency of the suit. Accordingly issues no.1 to 3 are decided in favour of plaintiffs while issue no.9 is decided against the defendants."*

9. The Municipal Council (defendant No.1) had filed an appeal before the First Appellate Court and the First Appellate Court vide judgment dated 12.03.2013 had dismissed the said appeal. In para 14 of the said judgment dated 12.03.2013, apart from other aspects, reliance was placed upon certified copy of the judgments passed by the First Appellate Court which were duly exhibited as Ex.P17 to Ex.P19 and Ex.P21 and it was observed that in one of the said judgments, learned ADJ had clearly held that necessary evidence about the existence of scheme and the land on which the said scheme would apply had not been produced by the Municipal Committee and that in judgment Ex.P21, it had been found that there was no such scheme and if at all there was a scheme, the same had been cancelled. Reference was also made to the order passed by the Deputy Commissioner Ex.P23 wherein on an appeal filed by one Chaman Lal, the Deputy Commissioner, Gurugram had held that scheme of 1966 had been



cancelled. Para 14 of the said judgment dated 12.03.2013 is reproduced hereinbelow:-

"14. Moreover, there is ample evidence on the file about non existence of the scheme as stand revealed from certified copy of the judgment Ex.P-17 to Ex.P-19, Ex.P-21 wherein the court of learned ADJ has clearly held that necessary evidence about the existence of scheme and the land on which this scheme apply, necessary record, Municipal Committee has failed to produce. In Ex.P-21 learned court of ADJ has come to the same conclusion that there was no such scheme no.3 and even if it was there the same has been cancelled. Even if I ignore these judgment of my colleagues then also the cancellation of scheme is amply proved on the file from the order passed by Deputy Commissioner, copy of which is Ex.P-23 wherein on the appeal of one Charnan Lal vires of scheme sanctioned in the year 1966 (instant scheme) were challenged. Learned Deputy Commissioner Gurgoan held that scheme of 1966 has been cancelled.

Thus the appellant has miserably failed to show the existence of scheme no.3 or that it was implemented or to connect that suit plot falls under scheme no.3 meant to kept as open space. Here, I would also like to refer to Ex.P-9 wherein suit plot has been shown with red colour and land of Sharu Ram is shown on the Eastern side just across 20 feet gali. Admittedly Sharu Ram has been able to show before the civil court that his land does not fall in scheme no.3. On the North Eastern side of the suit land houses have been shown constructed and at the front and back side of plot of Sharu Ram as well as suit plot added with the law of adjoining plot roads are shown situated. On what basis Municipal committee is claiming this 250 sq. yards of land to be part of their scheme, has not been explained. Therefore no illegality can



be found with the findings of trial court that suit plot does not fall in the scheme no.3 and the learned trial court has rightly set aside the impugned orders dated 19.8.2002 and 26.11.2002 and it has rightly granted mandatory relief directing defendant to sanction the site plan, Learned Trial court has rightly directed the appellant to remove the boundary wall so as to restore the position of suit property at status quo ante”

10. The Municipal Committee, Gurugram (defendant No.1) still being dissatisfied, filed RSA-2290-2013 and the Coordinate Bench of this Court vide order dated 22.08.2019 dismissed the said appeal and in the said judgment, it had specifically been noticed that there was a sale deed in favour of the plaintiff which was duly proved on record as Ex.P10 and there was no evidence on record to show that the land of the plaintiff had been taken over in accordance with law and that the witnesses produced by defendant No.1 i.e., DW5 and DW6, had admitted in their cross-examination that they had not seen any documents vesting the suit land with the Municipal Corporation. Paras 9 and 10 of the said judgment are reproduced hereinbelow:-

“9. There is no dispute that the land initially belonged to Raja Rati Ram who executed a sale deed in favour of the respondent which is Ex P-10. The sale deed has duly been proved by PW4 Bhupinder Singh, PW-5 Satya Narayan Aggarwal, PW-6 Harish Kumar and PW-7 B.B Sharma. The argument that the land falls within Town Planning Scheme no. 3 has been rejected by both the courts below by taking into consideration the judgment rendered in Civil Appeal No 34 of 25.9.1986 titled Municipal Committee Vs Sharu Ram, where in similar circumstances the first Appellate Court had



noted that Town Planning Scheme no. 3 had never come into existence nor had it been acted upon. No appeal has been filed against the said judgment, nor has the counsel for the appellant been able to show that the Town Planning Scheme no. 3 had ever been implemented.

10. *It is also noted that there is no evidence on the record that the appellant herein has taken over the land and under which provision of law. Merely by stating that the plot is a vacant piece of land as per the record relating to sanctioning of the Scheme and it vests with the appellant would not suffice when there is a sale deed on the record Ex P-10 in favour of the respondent duly executed by the owner of the land. Both the witnesses as produced by the appellant i.e DW-5 and DW-6 have admitted in the crossexamination that they have not seen any document vesting the land with the Municipal Corporation. Based on the evidence, the Courts below rightly came to the conclusion that the Town Planning Scheme no. 3 was never implemented nor is there any record showing the land vested with the Municipal Corporation.”*

11. The Municipal Committee, after a delay of 1288 days, had challenged the abovesaid judgment dated 22.08.2019 before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 21.08.2023 dismissed the SLP both on the ground of delay as well as on merits. The order passed by the Hon'ble Supreme Court dated 21.08.2023 in SLP (Civil) Diary No.23191/2023 is reproduced hereinbelow:-

“There is a delay of 1288 days in filing the special leave petition.

Nevertheless, we have heard learned counsel for the petitioner and learned counsel for the caveators. We do not find any merits in special leave petition. The same is



dismissed both on the ground of delay as well as on merits.

Pending application(s), if any, shall also stand disposed of."

12. In the meantime, respondent No.1-plaintiff filed an execution petition on 27.02.2020 and in the said execution petition, the Municipal Committee, Gurugram who was the Judgment Debtor No.1 filed objections, which objections have been dismissed vide order dated 09.01.2025 by the Executing Court. While dismissing the said objections, it had been observed that the decree dated 23.11.2010 had attained finality upto the Hon'ble Supreme Court and the plea sought to be raised by the Judgment Debtor No.1 on the merits of the main case could not be permitted to be raised before the Executing Court, as the Executing Court is bound to execute the decree passed by the trial Court. Relevant portion of the order dated 09.01.2025 passed by the Executing Court is reproduced hereinbelow:-

"4. At the outset, it is pertinent to mention here that the decree-holder has sought the execution of decree passed on 23.11.2010, which has attained its finality. Thereafter, the appeal was filed by the Jds which was also dismissed on 12.03.2012. Subsequently, RSA was filed by JDs which was also dismissed on 22.08.2019. Then SLP was filed by the JD, it was dismissed on 21.08.2023 by the Hon'ble Supreme Court of India. Moving further, one Kuldeep Sharma had draftsmen of MCG appeared on 17.03.2013 before the ld. Predecessor Court and made a statement to the effect that Jds will obey the order of Court and will sanction the site plan and will remove the construction existing on the suit property which was made during the pendency of the suit. It shows that judgment dated 23.11.2010 has attained its finality till the Apex Court. Further, this Court is of the considered



opinion that the objections which are taken by the JD No.1 are pertaining to the merits of the main case which has already been adjudicated till Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India has dismissed the SLP on merits as well as on the ground of limitation. Further, perusal of the judgment and decree dated 23.11.2010 shows that the implementation of town planning scheme No. 3 has already been rejected by the Competent Court. Moreover, it is the settled law that the executing Court cannot go beyond the decree passed by the trial Court. It has to execute the decree as it stands, for the decree is binding and conclusive between the parties to the suit. Resultantly, objections are dismissed being devoid of merits.

Pronounced in open Court:

Dated: 09.01.2025”

13. It is the said order which is the subject matter of challenge in Civil Revision No.1469 of 2025. The said order passed by the Executing Court is in accordance with law, inasmuch as, it is a matter of settled law that the Executing Court cannot go beyond the decree and once the decree has attained finality upto the Hon'ble Supreme Court, it does not lie in the mouth of the Judgment Debtor to re-agitate the merits of the case. The said order, thus, deserves to be upheld.

14. In addition to the abovesaid revision petition, the Municipal Corporation, Gurugram has chosen to file a review application of the judgment and decree dated 22.08.2019 passed by the Coordinate Bench of this Court along with an application for condonation of delay of 1998 days in filing the said review application and also an application for additional evidence under Order 41 Rule 27 CPC.



15. Learned counsel for the Municipal Corporation, Gurugram, has tried to re-argue the matter and has submitted that the judgment dated 22.08.2019 passed by the Coordinate Bench of this Court is erroneous. Learned counsel has even sought to raise arguments which are beyond the arguments raised by the counsel for the appellant/review applicant as noticed in para 7 of the judgment dated 22.08.2019. Learned counsel for the Municipal Corporation, Gurugram has further tried to refer to the documents sought to be placed on record as additional evidence, in support of her argument that the Municipal Corporation, Gurugram has a meritorious case. It is the prayer of the counsel for the Municipal Corporation, Gurugram that on reconsideration of the entire matter, the judgments of the trial Court, Appellate Court as well as of the Coordinate Bench of this Court with respect to which SLP has been dismissed on merits as well as on delay, be set aside.

16. Learned counsel for respondent No.1-plaintiff, on the other hand, has vehemently opposed the revision petition as well as the review application. It is submitted that in the garb of review, the present applicant cannot be permitted to re-argue the matter. It is submitted that the arguments which were raised before this Court and were noticed in para 7 of the judgment dated 22.08.2019 were duly considered by the Coordinate Bench of this Court and after considering the said arguments, the appeal filed by the appellant-review applicant was dismissed. It is argued that it is a matter of settled law that even assuming although not admitting that the judgment is erroneous, then also the same cannot be a ground to review the said judgment and the person aggrieved is required to move to the higher



Court to get the said judgment set aside. It is submitted that the RSA was argued by Mr. A.K. Bura, Advocate and all his arguments were duly noticed and on account of change of counsel, respondent No.1-plaintiff cannot be made to further litigate with respect to a litigation which has attained finality. It is further submitted that in the present case, three Courts had given concurrent findings of fact and thus, the same should not be reopened in a review application, more so, when the Hon'ble Supreme Court has also dismissed the SLP. It is also submitted that the application for delay as well as application for additional evidence are meritless and thus, deserve to be dismissed.

17. The Hon'ble Supreme Court in the case of **Parson Devi and others Vs. Sumitri Devi and others** reported as **(1997) 8 Supreme Court Cases 715**, had observed that while exercising the power of review under Order 47 Rule 1 CPC, it is not permissible for the Court to rehear the matter and that the review petition must be resorted to for a limited purpose and cannot be allowed to be "an appeal in disguise". Relevant portion of the said judgment is reproduced hereinbelow:-

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be



"an appeal in disguise."

10. Considered in the light of this settled position we find that Sharma, J. clearly over-stepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that "accordingly", the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided" and as such the case was covered by Article the scope of Order 47 Rule 1 CPC. ***There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction.*** While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, "Which had to be detected by a long drawn process of reasons" and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review of the order of petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997."



18. As has been detailed hereinabove and after considering the facts of the present case, it is apparent that the applicant-Municipal Corporation-defendant No.1 had not been able to prove their defence before the trial Court and thus, the suit of the plaintiff was decreed and even the appeal filed before the First Appellate Court was dismissed. A concurrent finding of fact in favour of the plaintiff and against the present petitioner given by the trial Court as well as by the Appellate Court was further upheld by the Coordinate Bench of this Court and the SLP against the same was dismissed on merits and on delay. In the said circumstances and also in view of the law laid down by the Hon'ble Supreme Court in the case of ***Parson Devi*** (Supra), this Court cannot permit the present applicant/petitioner to re-argue the entire matter and agitate the review application as "an appeal in disguise".

19. It would also be relevant to note that the present review application has been filed through a separate counsel and not through the counsel who had argued the Regular Second Appeal and thus, it does not lie in the mouth of the present counsel to agitate that other arguments had been raised which were not considered by the Coordinate Bench of this Court while dismissing RSA No.2290 of 2013 on 22.08.2019. The arguments raised by the earlier counsel had been duly noticed in para 7 of the judgment dated 22.08.2019 passed by the Coordinate Bench of this Court and had been duly dealt with in the subsequent paragraphs and it could not be shown that the said arguments were not duly considered. Even otherwise, a perusal of the finding of the trial Court, Appellate Court as well as of the Coordinate Bench of this Court would show that the said finding had been



given after considering the evidence on record, thus, no ground is made out to interfere in the present review application.

20. With respect to the application filed under Section 5 of the Limitation Act for condonation of delay of 1998 days in filing the review application, it would be relevant to note that the judgment in the Regular Second Appeal was passed on 22.08.2019 and the Municipal Corporation, Gurugram had approached the Hon'ble Supreme Court after a delay of 1288 days and the Hon'ble Supreme Court vide order dated 21.08.2023 had dismissed the SLP both on the ground of delay as well as on merits. The present review application had been drafted on 05.03.2025 i.e., after a delay of more than 1 year and 6 months from the date of passing of the order by the Hon'ble Supreme Court in spite of the fact that the Municipal Corporation, Gurugram was the one who had filed the SLP and was thus aware of the said order. Moreover, no liberty to file any review application was either sought or granted by the Hon'ble Supreme Court. Thus, in view of the said facts and circumstances, there is no sufficient cause for seeking condonation of delay of 1998 days in filing the review application and the application under Section 5 of the Limitation Act, i.e., CM-2650-C-2025 also deserves to be dismissed and is accordingly dismissed.

21. With respect to application bearing No.CM-2651-C-2025 filed by the review applicant under Order 41 Rule 27 CPC for additional evidence, it would be relevant to note that the application filed by review applicant does not fall within any of the parameters laid down in Order 41 Rule 27 CPC. Order 41 Rule 27 CPC is reproduced hereinbelow:-

"ORDER 41 RULE 27 CPC:-



27. *Production of additional evidence in Appellate Court—*

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

22. In the present case, it cannot be stated that the trial Court or the Appellate Court had refused to admit the evidence which is sought to be produced by way of additional evidence, as the same was not produced before either the trial Court or the First Appellate Court.

23. Learned counsel for the review applicant has fairly submitted that the document (Annexure A-7) is already exhibited as Ex.D8 and thus, there is no need to file additional evidence regarding the same and with respect to documents (Annexures A-8 to A-11), it has also been fairly submitted that the said documents were all available with the review



applicant at the time of leading their evidence before the trial Court but were not produced before the trial Court by the Municipal Committee. In the said circumstances, it cannot be said that the said documents could not be produced before the trial Court, in spite of due diligence. Moreover, allowing the said application would lead to reopening of the case, which was instituted in the year 2003 and has been decided upto the Hon'ble Apex Court. Furthermore, since the Coordinate Bench of this Court had decided RSA on 22.08.2019, thus, it cannot be said that this Court requires any document (sought to be produced) to enable it to pronounce the judgment.

24. It is apparent that in the present case, the Municipal Corporation, Gurugram/defendant No.1 has been able to delay the execution proceedings which were instituted in the year 2020 for several years as till date the decree dated 23.11.2010 has not been executed and the execution has not been satisfied in spite of the fact that in the order dated 09.01.2025, it has been noticed by the Executing Court that Kuldeep Sharma, Draftsman of MCG had appeared on 17.03.2013 before the Predecessor Court and had made a statement to the effect that the JDs would obey the order of the Court and would sanction the site plan and remove the construction existing on the suit land, which was made during the pendency of the suit. The conduct of the Municipal Corporation-defendant No.1 in delaying the execution proceedings endlessly is in the teeth of the direction given by the Hon'ble Supreme Court in the case of **Periyammal (Dead) and others Vs. Rajamani and another reported as 2025 SCC Online SC 507**, in which the Executing Courts have been directed to dispose of the execution proceedings within six months.



25. As has been stated hereinabove, the order dated 09.01.2025 passed by the Executing Court is completely in accordance with law as it is the duty of the Executing Court to execute the decree, more so, when it has been upheld upto the Hon'ble Supreme Court and the objections filed by the present petitioner/Municipal Corporation/defendant No.1/JD No.1 are completely misconceived.

26. Keeping in view the abovesaid facts and circumstances, CR-1469-2025 is dismissed and order dated 09.01.2025 is upheld. Review application i.e., RA-RS-14-2025 as well as application under Section 5 of the Limitation Act for condonation of delay of 1998 days in filing the review application i.e., CM-2650-C-2025 and also application filed under Order 41 Rule 27 CPC for permission to lead additional evidence i.e., CM-2651-C-2025 are also meritless and are accordingly, dismissed.

27. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

15.07.2025

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**