



2025:DHC:1600



\$~53

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

*Date of Decision: 03.03.2025*+ **RC.REV. 293/2024 & CM APPL. 12523/2025, CM APPL. 12765/2025 & REVIEW PET. 141/2025**

VIJAY GUPTA

.....Petitioner

Through: Mr. Vivek Narayan Sharma, Ms. Shruti Priya Mishra, Ms. Mahima Bhardwaj Kalucha, Mr. Dinesh Sharma and Mr. Adhiraj Wadhera, Advs.

versus

AJAY PAL SINGH

.....Respondent

Through:

**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)****CM Appl.12523/2025***[Exemption from filing certified copies]*

1. Allowed, subject to just exceptions.
2. The Application stands disposed of.

**CM Appl.12765/2025***[Seeking condonation of delay in re-filing]*

3. This is an Application filed on behalf of the Petitioner seeking condonation of delay of 5 days in filing the Review Petition.
4. For the reasons as stated in the Application, the delay is condoned.
5. The Application stands disposed of.

**REV. PET. 141/2025**

6. The present Petition has been filed seeking a review of the order dated 23.01.2025 passed by this Court [hereinafter referred to as "Order in



2025:DHC:1600



Review”]. A reading of the Review Petition sets out that what the Petitioner is attempting to do is to re-argue the matter before this Court.

7. Learned Counsel for the Review Petitioner has raised one challenge in this review. He contends that the finding on the availability of suitable alternate accommodation *qua* property no. 1640 Kotla Mubarakpur, New Delhi [hereinafter referred to as “Property No. 1640”] is not in accordance with law and that a triable issue was raised before the learned Trial Court which requires examination.

7.1 This Petition was heard by this Court on 21.10.2024 and thereafter, on 23.01.2025, when the Court disposed of the Petition, after examining all the contentions made by the parties. So far as concerns the issue of availability of Property No. 1640, the same was also dealt with by the learned Trial Court. Learned Counsel for the Review Petitioner submits that the “Respondent’s version” which is set out in paragraph 43 of the Order dated 29.08.2024 passed by the learned Trial Court [hereinafter referred to as “Impugned Order”], does not tally with the findings of the learned Trial Court.

8. This submission of the learned Counsel for the Review Petitioner is without merit. In the first instance, it is settled law that the power of review cannot be exercised by the Court merely to re-examine a judgment which has already been examined and upheld by this Court.

8.1 The Supreme Court in the case of *Kamlesh Verma v. Mayawati*<sup>1</sup>, has held that the application for review is entertained only under the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure, 1908

---

<sup>1</sup> (2013) 8 SCC 320



including on account of a mistake or an error apparent on the face of the record. A review proceeding cannot be equated with an original hearing unless there is a glaring omission or similar grave error which leads to a miscarriage of justice, the power cannot be exercised. The relevant extract of the ***Kamlesh Verma Kamlesh Verma*** case is reproduced below:

*“18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. **A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. [(2006) 5 SCC 501], held as under: (SCC pp. 504-505, paras 11-12)***

*“11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.*

*ll errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.*

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

***19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in***



**the guise that an alternative view is possible under the review jurisdiction.**

***Summary of the principles***

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

**20.1. When the review will be maintainable:**

**(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;**

**(ii) Mistake or error apparent on the face of the record;**

**(iii) Any other sufficient reason.**

The words “any other sufficient reason” have been interpreted in *Chhajju Ram v. Neki* [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

**20.2. When the review will not be maintainable:**

**When the review will not be maintainable:**

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review



*petition.*

*(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”*

[Emphasis Supplied]

9. It is also apposite to set out the findings given in paragraph 43 of the Impugned Order. The learned Trial Court has in paragraph 43 of the Impugned Order extracted in a tabular form the description of the property and the contention of both the Petitioner and the Respondent. It is set out below:

<b>Description of property</b>	<b>Petitioner's version</b>	<b>Respondent's version</b>
1640 Kotla Mubarakpur	<p>Second floor in the front portion of property is being used as residence by the petitioner and his family. Rooms in the Back portion of property have been let out for residential purposes and are not suitable for running the business.</p> <p>The front portion on the ground floor are jointly owned by the petitioner and rent proceeds out of the same are being equally distributed between him and other co-owners. The space is being used as offices permissible in residential area and have already been let out to other tenants.</p> <p>The remaining portion of the property is in the possession of other family members.</p>	<p>This is a 5 storey building built on a plot size 250 sq yards comprising of ground floor - 2 shops on rent, office of petitioners - VC Real Estate Construction, rear portion given on rent as godown, Mezzanine floor above 6 feet height off the ground floor given on rent, first floor consisting of 2-3 rooms, kitchen, toilet on the front side (entry from the front), on the rear portion about 10 rooms (entry from the backstreet), 2nd floor same as the first floor, 3rd floor - same as 2nd floor, 4th floor half construed comprising of 4-5 rooms, toilet and barsati.</p>

9.1 The learned Trial Court gave a finding that no portion of this property is lying vacant or suitable for a garments shop/boutique which is the requirement of the Petitioner. In addition, it was stated by the learned Trial



Court that all the floors except the ground floor are in the possession of other family members of the Respondent/landlord and that the front portion on the ground floor is owned, not by the Petitioner exclusively, but by his other family members and is already tenanted with the rent proceeds being distributed amongst the co-owners. The relevant extract of paragraph 44(i) is also reproduced below:

*"44. Whether the properties are available and suitable as averred by the respondent.*

*i)1640 Kotla Mubarakpur New Delhi:- In the affidavits filed on behalf of the respondent there is no submission that any of the portion of this property is lying vacant or is suitable for the purposes of a garments shop cum boutique. The petitioner along with his family is residing in the second floor of property. The other floors except the ground floor are stated to be in possession of other family members of the petitioner. This has not been denied by the respondent in her application seeking leave to defend. The petitioner has averred that there are rooms in the back portion of the property which have been let out for residential purposes. It is submitted that the said rooms being residential in nature and also in the backside with very narrow access from the front gully are not suitable for running the said business. The front portion on the ground floor are jointly owned by the petitioner and other family members and rent proceeds out of the same are being equally distributed between him and other co-owners. The space is being used as offices permissible in residential area and have already been let out to other tenants. These pleadings of the petitioner have not been contested by the respondent. Further even positively no assertion has been made that any portion of this property is lying vacant and suitable for the purpose of starting a garments sale shop and boutique."*

[Emphasis Supplied]

10. Secondly, the law on availability of alternate suitable accommodation is well settled, that it is not only that the accommodation is to be available, it also has to be suitable and alternate. This Court had dealt with this aspect in paragraph 8, 9 and 10 of the Order in Review in the following manner:

"8. The learned Trial Court has dealt with each one of the properties which are stated to be available by the Petitioner/tenant. It is contended that the Respondent/landlord and his family members are residing in the second floor of Property No. 1640 and the other floors, except ground floor, of this



property are in the possession of other family members, thus are not available for use. The front portion of the ground floor is jointly owned by the Respondent/landlord and his other family members and the space is being used for offices permissible in residential areas and are occupied by other tenants.

8.1 Property No. 289 is owned by other co-owners/other family members of the Respondent/landlord and since this space does not belong to the Respondent/landlord, hence is not available for his use. The same is the case qua Property No. 1662/1 which is also not owned by the Respondent/landlord.

8.2 Thus, quite clearly, neither of these properties are available with the Respondent/landlord for the use as is set out in the Eviction Petition.

9. The provisions of Section 14(1)(e) of the Act have been provided with care by the legislature, not only is the accommodation to be 'alternate', but it is also required to be suitable. The Supreme Court in the *Shiv Sarup Gupta v. Mahesh Chand Gupta* [1999 (6) SCC 222] has held that for an Eviction Petition to fail on the ground of availability of alternate suitable accommodation, the availability of another accommodation must be suitable and convenient in all respects as the tenanted accommodation from which the landlord seeks eviction of the tenant. It was held that:

*“14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. **Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation,** may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. **Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable,***



**obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction.** Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.”

[Emphasis Supplied]

10. As discussed above, concededly the Property No. 1640, Property No. 289 and Property No. 1662/1 are not available with the Respondent/landlord. These properties cannot thus be considered as suitable alternate accommodations.”

[Emphasis supplied]

10.1 Thus, the finding that the Review Petitioner seeks to challenge has already been adjudicated upon by this Court. As stated above, it is well settled that a party is not entitled to seek review of judgment/order merely for the purpose of re-hearing for a fresh decision on the same.

11. So far as concerns the *bona fide* requirement of the Respondent/landlord, the same was for the purpose of setting up of boutique. It is well-settled that the ground floor is more suitable for commercial purposes and businesses. If there is availability of space on the ground floor with the landlord, there is no question of the tenant asking him to take alternate premises or to operate out of the top floor. In *Uday Shankar Upadhyay v. Naveen Maheshwari*<sup>2</sup>, the Supreme Court has held that the Court cannot dictate to the landlord as to the extent which floor he must use for his business. Besides shops and businesses are usually on the ground floor. The relevant extract of the *Uday Shankar Upadhyay* case is reproduced below:

“7. In our opinion, once it is not disputed that the landlord is in *bona fide*

---

<sup>2</sup> (2010) 1 SCC 503



*need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. **It is well known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily.** The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the courts below that the sons of Plaintiff 1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained. As regards the finding that the sons of Plaintiff 1 are getting a salary of Rs 1500 from the firm, in our opinion, this is wholly irrelevant and was wrongly taken into consideration by the High Court.”*

[Emphasis Supplied]

11.1 The learned Trial Court has given a detailed description of the availability of the property at No.1640. The only availability which has not been denied by the Petitioner/tenant is of rooms on the back portion of the property which have a narrow access. This was examined and found as not to be suitable for running the business. The front portion of the ground floor of the property is concededly in the possession of the tenants and being used by other family members. Thus, this portion is not available for use by the Respondent/landlord.

12. As stated above, this Court has dealt with this aspect of the matter in paragraphs 8 to 10 of the Order in Review and in view of the fact that no space on the front portion of the ground floor is available for the Respondent/landlord, it has been held that no alternate suitable accommodation is available for use by the Respondent/landlord.

13. No error has been shown to the Court which would require this Court to exercise jurisdiction under its powers for review, given the settled law as discussed above.

14. The Review Petition is accordingly dismissed with costs in the sum of



2025:DHC:1600



Rs. 25,000/- payable directly to “*Bar Council of Delhi-Indigent and Disabled Lawyers Account*” within a period of two weeks.

15. The parties shall act based on a digitally signed copy of the order.

**TARA VITASTA GANJU, J**

**MARCH 3, 2025/r/jn**

*Click here to check corrigendum, if any*