

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Biswaroop Chowdhury

RVWO 27 of 2024
With
APO 174 of 2018
IA No. GA 2 of 2024

West Bengal financial Corporation
Vs.
Efcalon Tie-Up Pvt. Ltd.

RVWO 7 of 2025
IA No. GA 1 of 2025

Efcalon Tie-UP Pvt. Ltd.
Vs.
West Bengal Financial Corporation

For the WBFC : Mr. Anindya Mitra, Sr. Adv.
Mr. Sanniddhya Dutta, Adv.
Mr. Abhijit Sarkar, Adv.
Mr. Abhik Chitta Kundu, Adv.

For the Efcalon : Mr. Sabyasachi Chowdhury, Sr. Adv.
Mr. Rupak Ghosh, Adv.
Mr. Meghnad Dutta, Adv.
Mr. Rajesh Upadhyay, Adv.

Hearing Concluded on : 2nd August, 2025

Judgment on : 11th August, 2025

SOUMEN SEN, J:

1. Both the plaintiff and the defendant have filed review applications separately with regard to the payment of stamp duty as

directed by the judgment and order dated 25th August, 2023. This judgment is under review.

2. The grounds are different. However, it pertains to a direction by the Hon'ble Division Bench for payment of stamp duty on instrument dated 7th July, 2008 described as Memorandum of Understanding (MOU).

3. The first review applicant, West Bengal Financial Corporation and the second review applicant Efcalon Tie Up Private Limited for the sake of convenience and brevity are described as Corporation and Efcalon respectively.

4. The order under review was challenged by WBFC in a Special Leave Petition (Civil) Diary no. 7735 of 2024. The said review application was dismissed as withdrawn on 06.05.2024 in view of the submission made by the learned Counsel on behalf of Corporation that the said corporation shall file a review application in so far as the WBFC has been directed to bear half of the stamp duty/penalty amount.

5. Before we enter into the merits of the review applications we may briefly indicate the facts.

6. The Corporation and Efcalon had entered into a MOU whereby rights have been created partly over immovable properties and partly over movables. Indisputedly, on the basis of the MOU Efcalon continue with the proceeding initiated by Corporation before the Debt Recovery Tribunal against the Borrower Company and after the

certificate was issued, filed necessary applications for execution on behalf of Corporation in which the said property was sold. Efcalon contended that by reason of MOU, Efcalon is entitled to the proceeds thereof. The Corporation after resolving and receiving the entire sale proceeds refused to part with the said money and denied the obligation to pay the sale proceeds to Efcalon. Efcalon filed a suit before the High Court and in the said proceeding had taken out an application for summary judgment under Chapter XIII(A) of the Original Side Rules. In the said proceeding Efcalon relied upon the said MOU to establish its right to claim the sale proceeds which was the outcome of the proceeding continued by Efcalon on and on behalf of the corporation. At this stage, objection was raised by Corporation with regard to the admissibility of the said document as it was contended by the Corporation that unless proper stamp duty is paid on the said instrument, the said document cannot be taken on record and admitting to evidence for the purpose of adjudicating the claim of Efcalon. The learned Single Judge allowed such objection and impounded the document only to admit upon payment of stamp duty and penalty. This has resulted in an appeal in which the order under review was passed.

7. The Corporation was aggrieved by the said order and preferred a Special Leave Petition as mentioned above in which the Hon'ble Supreme court passed the following order which is stated below:

“Learned Senior Advocate appearing for the petitioner - West Bengal Financial Corporation seeks permission to withdraw the present special leave petition and states that the petitioner will made a review application/petition insofar as it has been directed that they shall bear half of the stamp duty/penalty amount.

In view of the statement made, the special leave petition is dismissed as withdrawn with liberty to the petitioner to file a review application/petition.

The petitioner, if required and necessary, will be entitled to the impugned judgment after disposal of the review application/petition, only to the extent it has been asked to deposit or bear half of the stamp duty/penalty amount.”

8. This review application filed by the Corporation is on the ground that there is an error of law apparent on the face of record as in the teeth of Section 29(C) of the Indian Stamp Act 1890 the stamp duty is payable by the person who is relying upon the said document. The liability of stamp duty cannot be fastened on the Corporation as the Corporation has not relied upon the said document. Party who is relying upon such document insufficiently stamp to be admitted in evidence is required to oblige under the law to bear the entire stamp duty. The Stamp Act does not contemplate apportionment of payment of stamp duty. Moreover once the judgment of the learned Single Judge has been affirmed by the Hon’ble Division Bench the direction with regard to the payment of stamp duty in equal share by the parties was an error apparent on the face of the record. Hence the last

sentence of the operative portion of the judgment under review which reads:

“In the special facts and circumstances of the case, the parties Efcalon and the Corporation shall bear the stamp duty equally.”

should be recalled as it is an obvious error.

9. Mr. Anindya Kumar Mitra, learned Senior Counsel appearing on behalf of the Corporation has submitted that if a judgment is passed in ignorance of provision of law or there is a failure to consider an important provision of law materially affecting the result of the lis it would be an error of law apparent on the face of record as held in ***Gulam Abbas & Ors. v. Mulla Abdul Kadar (dead) Through his executors***¹. The reviewing court has a power to correct any mistake on the part of the court if there exists sufficient reason and the expression sufficient reason was held to be “are wide enough to include a misconception of fact or law by a court” per S.B. Sinha, J in ***Board of Control for Cricket in India & Anr. v. Netaji Cricket Club & Ors.***² paragraphs 89, 90, 91 and 92.

10. Mr. Mitra has emphasised on the following paragraph of the judgment in ***Lily Thomas v. Union of India***³ which was quoted with approval in **BCCI** (supra) in paragraph 92 it is stated thus:

¹ 1970(3) SCC 643

² 2005(4) SCC 741

³ 2000(6) SCC224

“92. Yet again in *Lily Thomas*³³ this Court has laid down the law in the following terms: (SCC pp. 247-48, para 52)

*"52. The dictionary meaning of the word 'review' is 'the act of looking, offer something again with a view to correction or improvement'. It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji*, held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying a the error."*
(emphasis supplied)

11. Mr. Mitra has submitted that the order passed disregarding Section 21(c) of the Indian Stamp Act is a clear error of law apparent on the face of the record for which the review application is required to be allowed by deleting the said sentence as mentioned above. Mr. Mitra has submitted that it is well-settled that the person who intends to rely on an insufficient/improperly stamp instrument has the option to submit the scope of Section 34 of the Act pay duty and penalty.

Section 34 of the Indian Stamp Act also provides that instrument not duly stamped is inadmissible in evidence.

12. In view of the fact that the Efcalon in the said proceeding was intended to rely on the said instrument, the learned Single Judge directed impounding of the said instrument and the Hon'ble Division Bench while accepting the said finding of the learned Single Judge by mistake had directed payment of stamp duty in equal proportion which is clear mistake of law.

13. Mr. Mitra has submitted that the Indian Stamp Act, 1899 is a fiscal statute the principles of equity of hardship are inapplicable in interpreting the fiscal statute. It is the consistent view of the Hon'ble Supreme Court and this Hon'ble Court that the principles of equity and hardship are inapplicable in a fiscal statute namely, Indian Stamp Act and in this regard reliance is placed on ***Seetharama Shetty v. Monappa Shetty***⁴, paragraph 17.3.

14. However, Mr. Mitra has not urged the said point for the purpose of review of the order under consideration in short the submission of Mr. Mitra is that in the order under review there exists a mistake an error apparent on the face of record which needs to be corrected. The power of the Code under Order 47 Rule I of the Code of Civil Procedure, 1998 is wide enough to include the misconception of fact or law by the Court. An application for review may be necessitated

⁴ 2024 SCC OnLine SC 2320

by way of invoking the doctrine the act of court are not prayed any other parties.

15. Per contra, Mr. Sabyasachi Chowdhury learned Counsel appearing on behalf of Efcalon has submitted that the review application is not maintainable as the Hon'ble Division Bench at the time of hearing the appeal has consciously passed an order after narrating the facts and thereby the contention of the Corporation that it was an error of law apparent on the face of the record is not acceptable. Mr. Chowdhury has referred to the Section 47 of the Code of Civil Procedure and submits that the Hon'ble Division Bench was conscious of the fact the MOU in some part creates a right in respect of immovable property and also created some right in respect of movable properties on the basis of which Efcalon has made the present claim in the suit. The whole facts were before the Hon'ble Division Bench. The entire proceeding before the Debt Recovery Tribunal was conducted by the respondent and it was only after the property was sold by DRT in the execution proceeding the Corporation failed, neglected and refused to transfer the sale proceeds to the respondents in breach of his obligation under the MOU. It cannot be presumed that the Hon'ble Division Bench was unaware of a relevant provision of law and has passed an order in ignorance of law. If the judgment of the Hon'ble Division Bench is erroneous on law remedy lies elsewhere.

16. Mr. Chowdhury has submitted that although dismissal of the SLP may not bar filing of a review application, the court in review

jurisdiction is not exercising its appellate power and does not sit in appeal over the order. Unlike the power of the appellate court a reviewing court cannot correct all manner of errors. It is only when there is a patent error in the order a review court can correct such error in exercise of its power under Section 47 of the Code of Civil Procedure.

17. It is further submitted that in a similar situation where a subsequent Division Bench interfered with an order of the previous Division Bench in review jurisdiction the Hon'ble Supreme Court held that the Division Bench dealing with the review proceeding had overstepped its jurisdiction in interfering with the merits of the order decided by the earlier Division Bench. Reliance is placed on the decision in ***Chandmall Chopra & Anr. v. State of West Bengal***⁵ and ***Meera Bhanja (Smt) v. Nirmala Kumari Choudhury (Smt)***⁶. Merely because the present Division Bench it is of the opinion that a different view is possible on the same set of facts and law cannot interfere with the order in its review jurisdiction and pass any fresh direction. It is not permissible in law. The liberty granted by the Hon'ble Supreme Court cannot be construed to be a permission to file a review petition as the liberty was granted on the basis of a submission made on behalf of the corporation before the Hon'ble Supreme Court that they wish to file a review petition. The said order of the Hon'ble Supreme Court

⁵ AIR 1986 Cal 111

⁶ 1995 (1) SCC 170

cannot be construed to mean that the Division bench in hearing the review application could be precluded from deciding whether the review application is maintainable under Section 47 of the Code of Civil Procedure. The purported grounds, on which the review petition has been sought for by the defendant, if at all entertained, would amount to re-hearing of the appeal being APO No. 174 of 2018 and substituting and/or inserting a new view in place and stead of the view as contained in the Judgment and Order dated 25th August, 2023. In this regard reliance is placed upon the judgement of the Hon'ble Supreme Court of India ***Kamlesh Verma -Vs- Mayawati & Ors reported in***⁷ paragraph 20.1.

18. The law only allows the Court to interfere in review only in case of mistake or error. Even if it is assumed through not admitted that the order under review is erroneous on merits the court has no power to review its own order unless it confirms to Order 47 CPC and attracts any of the grounds specified therein for review. There is no mistake or error apparent on the face of the record or existence of any reason for exercise of the power of review under Order XLVII of the Code of Civil Procedure. Mr. Chowdhury in this regard has placed reliance on the following Judgments:

a. ***Chandmall Chopra v. State of West Bengal***,⁸

b. ***Meera Bhanja v. Nirmala Kumari Choudhury***,⁹

⁷ 2013(8)SCC 320

⁸ AIR 1986 Cal 111

⁹ (1995) 1 SCC 170

c. ***Santi Kumar Jain v. Anil Kumar Datta***,¹⁰

d. ***Ajit Kumar Rath v. State of Orissa***,¹¹

19. However, Mr. Chowdhury has fairly submitted that the review application filed on behalf of the Efcalon contending that the MOU cannot be termed as conveyance because the document records transfer of only actionable claim of the defendant in TA no. 41 of 2002 and not of any right, title and interest of the property and hence the direction to bear the stamp duty in equal proportion was an apparent error is not pressed as it cannot be considered to be a ground for review of the order under consideration.

Observation:

20. The power of review is circumscribed by order 47 Rule 1 CPC. Review jurisdiction is distinct from appellate jurisdiction. The review proceedings are not meant for rehearing of appeal. The power of review can be exercised, inter alia, where some mistake or error is appellant on the face of the record. It may also be exercised on any analogous ground, but under no circumstances on the ground that the decision was erroneous on merits, that would fall within the exclusive domain of a court of appeal.

21. It is also well-settled that mistake or error apparent on the face of the record has to be self-evident and does not require a process of reasoning and the same is clearly distinct from erroneous decision

¹⁰ AIR 1996 Cal 4 at 6

¹¹ (1999) 9 SCC 596

as has been held in *Parsion Devi & Ors. vs. Sumitri Devi & Ors.* reported in 1997(8) SCC 715. In the said decision, the Hon'ble Supreme Court was considering the phrase "mistake or error apparent on the face of record". It was held, 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 of 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". 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 latter can only be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise". [See. Paragraphs 19 and 20 in *Barun Kumar Das v. State of West Bengal* reported in 2012(2) CHN 617].

22. In ***Hari Sankar Pal v. Anath Nath Mitter***,¹² considering the a five Judge Bench of the Federal Court while question whether the Calcutta High Court was justified in not granting relief to nonappealing party, similar to that of the successful whose position was appellant, held: (FCR p.48) "That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face

¹² 1949 FCR 36

of the record or even analogous to it. When, however, the court disposes of a case without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order 47 Rule 1, Civil Procedure Code.

23. The power of review, it is trite to say, should not be confused with appellate power. An Appellate Court is competent to correct errors committed by the Court subordinate thereto. In this regard, we can rely upon the judgement of Hon'ble Supreme Court pronounced in the case of Thungabhadra Industries Ltd. vs. The Government of Andhra Pradesh reported in AIR 1964 SC 1372 wherein Hon'ble Supreme Court held:-

"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out." (emphasis supplied)

24. In this regard we can profitably relied upon the judgement of Hon'ble Apex Court in State of West Bengal and Others Vs. Kamal Sengupta & Another reported in (2008) 8 SCC 612 to understand what can be said to be mistake or error apparent on the face of record.

25. In **State of West Bengal and Others vs. Kamal Sengupta and Anr.**¹³ wherein the Hon'ble Apex Court held :-

“22. The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not selfevident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

23. xxxxxx

24. xxxxxx

25. In *Hari Sankar Pal v. Anath Nath Mitter*, 1949 FCR 36 a five Judge Bench of the Federal Court while considering the question whether the Calcutta High Court was justified in not granting relief to nonappealing party, whose position was similar to that of the successful appellant, held: (FCR p.48)

“That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the

¹³ (2008) 8 SCC 612

purview of Order 47 Rule 1, Civil Procedure Code.” (emphasis supplied)

26. In **Shri Ram Sahu (Dead) through LRS vs. Vinod Kumar Rawat & Ors.** reported in **(2020) 11 SCR 865** power of a review court is stated in following words:

“7. The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or improvement”. It cannot be denied that the review is the creation of a statute. In the case of [Patel Narshi Thakershi vs. Pradyumansinghji Arjunsinghji](#), **(1971) 3 SCC 844**, this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

8. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by this Court in the case of [T.C. Basappa vs. T.Nagappa](#), AIR 1954 SC 440. It is held that such an error is an error which is a patent error and not a mere wrong decision. In the case of [Hari Vishnu Kamath vs. Ahmad Ishaque](#), AIR 1955 SC 233, it is observed as under:

“It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clearcut rule by which the boundary between the two classes of errors could be demarcated.”

8.1 In the case of [Parsion Devi vs. Sumitri Devi](#), (*Supra*) in paragraph 7 to 9 it is observed and held as under:

7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In

[Thungabhadra Industries Ltd. v. Govt. of A.P.](#), AIR 1964 SC 1372
this Court opined:

“What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an ‘error apparent on the face of the record’). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an ‘error apparent on the face of the record’, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by ‘error apparent’. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.”

8. Again, in [Meera Bhanja v. Nirmala Kumari Choudhury](#), (1995) 1 SCC 170 while quoting with approval a passage from [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma](#) (supra) this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

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 selfevident 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 of 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 a limited purpose and cannot be allowed to be “an appeal in disguise”. (emphasis supplied)

27. In a fairly recent decision in **S. Murali Sundaram vs. Jothibai Kannan & Ors.**, reported in **2023 SCC Online SC 185** the Hon'ble Supreme Court has discussed the scope and ambit of Order 47 Rule 1, Code of Civil Procedure in paragraphs 15 to 17. On a review of its earlier decisions it was held:

15. While considering the aforesaid issue two decisions of this Court on Order 47 Rule 1 read with Section 114 CPC are required to be referred to? In the case of Perry Kansagra (supra) this Court has observed that while exercising the review jurisdiction in an application under Order 47 Rule 1 read with Section 114 CPC, the Review Court does not sit in appeal over its own order. It is observed that a rehearing of the matter is impermissible in law. It is further observed that review is not appeal in disguise. It is observed that power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order 47 Rule 1 CPC this Court had summed upon as under:

“(i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-

drawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.”

16. It is further observed in the said decision that an error which is required to be detected by a process of reasoning can hardly be said to be an error on the face of the record.

17. In the case of Shanti Conductors (P) Ltd. (supra), it is observed and held that scope of review under Order 47 Rule 1 CPC read with Section 114 CPC is limited and under the guise of review, the petitioner cannot be permitted to reargue and reargue questions which have already been addressed and decided. It is further observed that 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 record justifying the court to exercise its power of review under Order 47 Rule 1 CPC.” (emphasis supplied)

28. It appears from the order under review that the previous Division Bench has considered that the memorandum of understanding dated 7th July, 2008 and made a detailed analysis of the said document as would be evident from the following paragraphs:

“On 7th July, 2008 a Memorandum of Understanding was executed between the Corporation described therein as the creditor and Efcalon described as the purchaser. The preamble part of this Memorandum made it abundantly plain that the

entire claims of the Corporation including actionable claims against the company-in-liquidation were being transferred to Efcalon. 2 In the Memorandum, Recital F is of paramount importance. It narrates that the parties with the view to settle their disputes and differences “against the said order dated 6th January, 2005” have agreed that the Corporation would transfer “its entire claim against the company-inliquidation and against its directors, Gouranga Sundar Das and Sunil Kr. Das to Efcalon and had assigned all its actionable claims including those mentioned in TA No. 41 of 2003.” In those circumstances, the appeal (before the division bench) would be withdrawn. Now, I come to the habendum portion. Clause 3 is of most significance. The Corporation would be “deemed to have transferred, conveyed, assured and assigned all its claims against the company-in-liquidation and against the said Gouranga Sundar Das and Sunil Kr. Das.....including its claim in TA No. 41 of 2003 and charge being claimed by it over and in respect of the premises of Biren Roy Road (West) at and for the consideration of Rs.53,70,000/-.” The Corporation relinquished its rights over these claims. Only Efcalon would have the right to enforce them against the company-in-liquidation and against the two directors. In Clause 4 the Corporation recorded its no-objection to the Official Liquidator executing and registering a deed of conveyance of the front portion of the said premises in favour of Efcalon. Under Clause 5 the Corporation would execute a purported irrevocable power of attorney in favour of Efcalon.”

29. The subsequent conduct of the parties in relation to the said memorandum of understanding was also considered as would be evident from the following paragraphs:

“The appeal against the order dated 6th January, 2005 was withdrawn. The Corporation issued a power of attorney in favour of Efcalon in the Debts Recovery proceedings. In the proceedings before the Debts Recovery Tribunal by an order dated 6th August, 2013 the rear portion of the said property was sold for Rs.2,63,61,000/-. By its final order on 21st August, 2015 the tribunal directed payment of Rs.1,91,14,712.78/- along with simple interest @ 2% per annum from 1st 3 April, 2003 till realization to the Corporation. By virtue of this order dated 21st August, 2015 the Corporation recovered Rs.2,38,72,006.94/- from the sale proceeds lying with the tribunal. What is recorded in the judgment and order of the tribunal is also of great importance for the purpose of the decision on the issue involved. It appears in paragraph 41 of the tribunal’s order that there was a conflict between the Corporation and United Bank of India over alleged concurrent charges of these parties over the said property and their respective claims. In paragraph 44 of its order the tribunal recorded that the original title deeds of the said property were deposited by the directors of the said company with the Corporation. The bank could not show any charge. The tribunal held “the Corporation is entitled to receive the sale proceeds of the landed property of the mortgage towards recovery of their dues. The rear portion of the said property has been sold by the tribunal. The said amount of sale proceeds is liable to be remitted to the Corporation towards recovery of their dues.” The Corporation was entitled to recover Rs.1,91,14,712.78/- as principal amount from the sale proceeds of the mortgaged property. On the basis of the said Memorandum of Understanding Efcalon instituted the present suit CS 138 of 2016 in this court and claimed the said amount of Rs.2,38,72,006.094/- from the Corporation together with interest.”

30. The Coordinate Bench has also taken into consideration that on or about 13th February, 2017 the corporation affirmed and filed its written statement in court broadly narrating the facts alluded to above and during the cross examination-in-chief of the witness for the plaintiff the learned Counsel for the plaintiff tried to tender the memorandum of understanding in evidence. It was made on Rs.500 non-judicial stamp papers. The admission of the said document was objected to by the learned Counsel for the Corporation on two grounds, first, it was required to be stamped under Section 35 of the Indian Stamp Act, 1899 and secondly it was registrable under Section 17 of the Indian Registration Act.

31. The previous Hon'ble Division Bench has recorded the nature of the controversy in the following words.

“The entire argument of learned counsel for both the parties centered around the point whether what was being acquired from the Corporation by Efcalon was an actionable claim or whether it was immovable property, movable property and actionable claim all rolled into one. If the former was true, the document required neither registration nor stamping. If the latter was the case, it required both stamping and registration. For insufficient stamping it was inadmissible in evidence.”

32. The submissions of the parties have been elaborately recorded thereafter from which it would appear that it was specifically argued on behalf of the review applicant that the memorandum of understanding was a conveyance, inter alia, transferring immovable property valued at over Rs.100 and unstamped or an insufficiently

stamped document could not be used or relied upon even for a collateral purpose and hence it required both registration and stamp duty. An insufficiently stamped instrument was inadmissible in evidence under Section 35 of the Indian Stamp Act 1899.

33. After hearing the learned counsels for the parties and taking into consideration Section 3 and Section 130 of the Transfer of Property Act and Section 3(a) read with the definition of “conveyance” in Section 2(10) and Entry Number No.23 of Schedule I of the Indian Stamp Act 1899, the Hon’ble Division Bench made the following observation:-

“The memorandum of Understanding is atleast partly a conveyance, in my view.

For all those reasons, I find no infirmity in the judgment of the learned court below.

We affirm the impugned judgment and order. The parties are directed to take steps before the learned single judge for implementation of the said impugned judgment and order so that the stamp duty can be assessed and paid and the defect in the instrument with regard to deficit stamp duty be cured as soon as possible. In the special facts and circumstances of the case, the parties Efcalon and the Corporation shall bear the stamp duty equally.”

34. By the time the review application was filed, the author of the judgment, Hon’ble Justice I P Mukherji was elevated as the Chief Justice of the Meghalaya High Court and accordingly both these review applications have been assigned to this bench in which one of

us, Hon'ble Mr. Justice Biswaroop Chowdhury, was a party to the aforesaid decision. In my interaction with Justice Chowdhury it appears that their Lordships have consciously directed apportionment of payment of stamp duty in equal measure in the facts and circumstances narrated in the body of the judgment which appeared to the Hon'ble judges of the said bench as special facts and circumstances for directing payment in equal measure. In view of the fact that it appears to be a conscious decision of the previous Division Bench and is not in ignorance or overlooking the relevant provisions of the Indian Stamp Act we are unable to accept the submission of Mr. Anindya Mitra, Senior Advocate, that the review application is maintainable.

35. On such consideration, both the applications for review and all connected applications relating thereto are dismissed.

36. On the same analogy, the application for review of the plaintiff is also dismissed.

37. However, there shall be no order as to costs.

(Soumen Sen, J.)

Biswaroop Chowdhury, J.:-

38. I have read the Judgment of my learned brother and have agreed with the conclusions. However I would like to add briefly reasons in support of the conclusions arrived at by Hon'ble Justice Sen.

39. It is well settled that when a Court delivers a judgment, or passes a decree or Order it becomes functus officio and cannot recall or vary its own order, only clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties under Section 152 of the Code of Civil Procedure.
40. It is true that a Court which has delivered a judgment can review its own judgment in accordance with the provisions contained in Order 47 Rule 1 of the Code of Civil Court. A Judge cannot sit in appeal over the judgment delivered by him. Thus a petition for Review cannot be an Appeal in disguise as elaborately discussed my Learned brother in the above paragraphs.
41. A judge when passes an order in his conscious mind by assigning reason cannot review his Order in which reason has been assigned even if the reasons appears to be cryptic. It is only when an error appears on the face of the record and detected after Judgment or Order is passed, which if brought to the notice of the Judge would have been taken into consideration by the Learned Judge while delivering judgment and the judgment in whole or in part would not have been passed can be taken up in Review Application.
42. In the instant the former Division Bench in which I was also a member upon considering the facts of the case and the relevant provision of law observed that the 'Memorandum of understanding'

relied upon by the plaintiff was indeed an agreement for sale and subject to the payment of deficit stamp duty.

43. The former Division Bench also took into consideration the conduct of the parties by acting on the said Memorandum of understanding by taking steps before Debt Recovery Tribunal. The Corporation being Government undertaking and a state within Article 12 of the Constitution permitted the plaintiff Efcalon to act on the said document without insisting on its registration by paying the required stamp duty. Upon acting on the basis of the said documents and allegedly depriving the plaintiff of its dues the point of stamp duty is taken in the suit. Although special Circumstances were not discussed in the Order but the same were considered. Indian Stamp Act does not provide by whom stamp duty is to be paid, but it provides the obligation to pay stamp duty on the document. Upon considering the facts and circumstances the previous Bench thought it fit to direct sharing of stamp duty by the parties equally. As reason is assigned for directing the parties to share stamp duty equally it is not an error apparent on the face of the record but a decision supported by reason. Thus there is no ground for Review.

44. However, there shall be no order as to costs.

(Biswaroop Chowdhury, J.)