



CNR: KAHC010377412022

NC: 2026:KHC:37243
RP No. 645 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S RACHAIAH

REVIEW PETITION NO. 645 OF 2022

BETWEEN:

SRI.M.R.RAJATH

S/O LATE RAMACHANDRA

AGED ABOUT 48 YEARS

R/AT #144,

METRO MALLEABLE

MANUFACTURERS PVT LTD.

NAYANDAHALLI VILLAGE

AZEEZ SAIT INDUSTRIAL TOWN

BANGALORE

... PETITIONER

(BY SRI. NATARAJA H.T., ADV.)

AND:

SRI.FAROOQ ALI KHAN

Digitally
signed by
SUSHMA
LAKSHMI B
S
Location:
High Court
of
Karnataka



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S/O MAHABOOB ALI KHAN

AGED ABOUT 42 YEARS

R/AT # 77, 2ND CROSS

SIDDARTHANAGAR

DR.T.C.M. ROYAN ROAD

BANGALORE – 560 053

...RESPONDENT

(RESPONDENT IS SERVED AND UNREPRESENTED)

THIS REVIEW PETITION IS FILED UNDER ORDER 47 RULE 1 OF THE CODE OF CIVIL PROCEDURE PRAYING TO REVIEW THE ORDER DATED 26.10.2021, PASSED BY THIS COURT IN RFA NO.985 OF 2020, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S RACHAIAH



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ORAL ORDER

(PER: HON'BLE MR. JUSTICE S RACHAIAH)

1. This review petition is filed by the petitioner being aggrieved by the order dated 26.10.2021 passed by the Co-ordinate Bench of this Court in RFA.No.985/2020, wherein the Co-ordinate Bench of this Court dismissed the appeal.
2. The petitioner has preferred this review petition on the ground that the Co-ordinate Bench of this Court has not properly appreciated the facts of the case and no opportunity was given to the petitioner in the said case.

Factual matrix of the case:

3. The petitioner being the appellant in the Regular First Appeal had preferred an appeal, being aggrieved by the judgment and decree passed in O.S.No.25222/2010 dated 12.12.2019 passed by the XXVI Additional City Civil and Sessions Judge, Mayo hall, Bengaluru (CCH-20). In the said suit, the Trial Court decreed the suit, restraining the petitioner / defendant from interfering with the



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plaintiff's ingress and egress and user of the suit schedule
'B' property passage.

4. Being aggrieved by the same, the petitioner / defendant preferred an appeal. However, the appeal came to be dismissed when the matter came up before the Court for hearing on interlocutory application.
5. Heard Sri Nataraja H.T., learned counsel for the petitioner. Respondent is served and unrepresented.
6. The submission of the learned counsel for the petitioner is that the Co-ordinate Bench of this Court ought not to have dismissed the appeal without appreciating the evidence on record and also the documents. Further, he submitted that the appeal has to be heard on merit. Without following the said procedure, if any order is passed, the same has to be held as erroneous and not proper. Making such submissions, the learned counsel for the petitioner prays to allow the review petition by setting aside the impugned judgment and also permit him to proceed with the case.



7. Having gone through the findings of the judgment passed in the Regular First Appeal, the Co-ordinate Bench while passing the judgment observed that, as per Order 41 Rule 11 of CPC, power is vested to the Appellate Court to dismiss the appeal without sending notice to the lower court. To substantiate the view, the Co-ordinate Bench relied on the judgment of the Allahabad High Court in the case of ***Shyam Prasad Mishra v. Vijay Prathap Singh***¹. As per the said judgment, the appeal can be dismissed when the appeal is lacking on merits and does not deserve for admission.
8. Be that as it may, now it is relevant to refer Order 47 Rule 1 of the Code of Civil Procedure, which reads as under:

ORDER XLVII

REVIEW

1. Application for review of judgment.—

(1) Any person considering himself aggrieved—

¹ AIR 2006 All. 56



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(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate



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Court the case on which he applied for the review.

1[Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

9. On perusal of the above said provision, it would indicate that review of a judgment or an order could be sought,
 - (a) from the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the applicant;
 - (b) Such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and
 - (c) On account of some mistake or error on the face of the record or any other sufficient reason.
10. In the present case, the review petition has been filed being aggrieved by the order passed by the Co-ordinate



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Bench of this Court in RFA.No.985/2020. However, the Co-ordinate Bench while dealing with the said appeal mainly relied on Order 41, Rule 11 of the Code of Civil Procedure.

11. On going through the said provisions, it makes clear that if the appeal is dismissed by invoking Order 41 Rule 11 of the Code of Civil Procedure, it means the appeal is not admitted or it is not necessary to admit the appeal filed by the appellant. Of course, the Court can deal with the said appeal without hearing the respondent. Once the appeal is admitted, the procedure as contemplated under law has to be followed; it means, the said appeal has to be dealt with on merit.
12. However, in this case, the notice to the respondent is duly served and he remained unrepresented. Under such circumstances, opportunity to represent the suit is required to be given to the appellant / petitioner. Having failed to do so, resulted in passing the impugned order. The same can be reviewed accordingly.



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13. Hence I proceed to pass the following:-

ORDER

- i) The review petition is allowed.
- ii) The order dated 26.10.2021 passed by the Co-ordinate Bench of this Court in RFA.No.985/2020 is set aside.
- iii) The Registry is directed to restore the appeal and list it before the Bench having roster.

**Sd/-
(S RACHAIAH)
JUDGE**

BSS
List No.: 1 Sl No.: 31