

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO. 95 OF 2015 IN
SECOND APPEAL NO.98/2015**

Sangita Bhagchand Bhawale & Ors .. APPLICANTS
Versus
Sardar Abchanagrsingh Sardar .. RESPONDENTS
and ors

...
Shri P.N.Surwase, Advocate for applicants
Shri A.D.Kasliwal, Adv. for respondents 1 to 4
...

CORAM : N.W.SAMBRE,J.
DATED : 1st JULY, 2015

ORDER :-

This application is moved by the appellant in Second Appeal No.98/2015.

2] Admittedly, the points which are sought to be canvassed in the review application were not argued at the time of the hearing of the Second Appeal. The same fact is fairly conceded by learned counsel for the applicant.

3] The question of law which according to present

applicant is required to be appreciated in the review jurisdiction is whether this Court was right in ignoring evidence that was placed on record in Regular Civil Suit No.34/2001.

4] The decree holder in Regular Civil Suit No.52/1993 was defendant in Regular Civil Suit No.34/2001 which was preferred by present appellant. Both these Suits have attained finality upto this Court.

5] According to present applicants, this Court has ignored the document viz. (a) Exh.47,48,49 these are 7/12 extract; (b) Exh.50 these are copy of 'Sanad' ; (c)Exh.52 these are site plan; (d) Exh.65 & 66 these are certified copies of two sale deeds; (e) Exh.67, 68, 69 these are city survey record.

6] In support of his contention, learned counsel for applicants has relied upon observations made by Apex Court in Civil Appeal No.3710/2012 decided on 23/4/2012 and the judgment of Allahabad High Court in the matter of **Firdaus Begum V/s Sheela Alias Susheela Devi Sharma reported in Laws (All)-2012-11-133/ADJ-2013-6-18**, so as to canvass that this Court should give opportunity to the present appellants/applicants and the executing Court be directed to allow these applicants to lead evidence in support of their claim and so as to establish their title to the

suit property.

7] In my opinion, having regard to the fact that the point was not canvassed while arguing Second Appeal in the limited scope of review the appreciation thereof is not permissible. I am of the view that Review Application is liable to be rejected. In support of my view, the law laid down by Apex Court in the case of **Kamlesh Verma V/s Mayawati and others reported in (2013) 8 S.C.C. 320** is applicable. Para 20 of the said judgment is worth to be noted before taking into account the points for consideration and it is produced herein for ready reference as under :

“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 fact of the record;

(iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in Chhajju Ram

V. Neki and approved by this Court in *Moran Mar Basselios Catholicos V. Most Rev. Mar Poulouse Athanasius* 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 or Iron Ores Ltd.*

20.2] 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 fact 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 fact 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 negated. “

8] In view of above, no case for interference is made out. Present application stands rejected.

9] At this stage, learned counsel for applicants submits that the judgment in the Second Appeal so also present order be stayed for period of one month.

10] No such request was made at the time when the judgment was delivered in the Second Appeal and the said judgment was delivered on 8/5/2015. In view thereof, and having regard to the fact that the earlier appeals have attained finality before this Court, it would not be appropriate for this Court to grant protection as prayed. As such prayer is rejected.

(N.W.SAMBRE,J.)

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