

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION (ST) NO.23191 of 2015
WITH
REVIEW PETITION (ST) NO.25634 of 2015
WITH
REVIEW PETITION (ST) NO.25644 of 2015
WITH
REVIEW PETITION (ST) NO.25631 of 2015
WITH
REVIEW PETITION (ST) NO.25636 of 2015
WITH
REVIEW PETITION (ST) NO.25640 of 2015
WITH
REVIEW PETITION (ST) NO.25642 of 2015**

Dilip Shankar Mulay

..Petitioner

Vs

1.Pradip Shankar Mulay and Ors.

.. Respondents

Mr. Dilip Shankar Mulay, petitioner present in-person.

Mr. Sandesh Deshpande, Advocate for Respondent no.1.

Mr. Harbhajan K. Manocha, Constituted Attorney of respondent no.2 in person present.
(IN CHAMBER)

CORAM : R.G.KETKAR,J.
DATE : 22/09/2015

PC:

1. Heard Mr. Dilip Shankar Mulay, petitioner-in-person, Mr. Sandesh Deshpande, learned counsel for respondent no.1 and Mr.Harbhajan Manocha, Constituted Attorney of respondent no.2 in all the petitions at length.
2. By these Review Petitions under section 114 read with

Order 47 of the Code of Civil Procedure, 1908, (for short, 'C.P.C.'), the petitioner has sought review of orders dated 10.6.2015 passed by this Court in Writ Petition No. 337 of 2015, 26.6.2015 in Writ Petitions No.11333 of 2014 and 11334 of 2014, 17.6.2015 in Writ Petition No.10956 of 2014, 10.6.2015 in Writ Petition No. 337 of 2015, 26.6.2015 in Writ Petition No.2152 of 2015 and 26.6.2015 in Writ Petition No.5744 of 2015. By these orders, the Writ Petitions instituted by the petitioner were dismissed.

3. In support of these petitions, Mr. Mulay submitted that by order dated 20.7.2007 passed below Exhibit-92 in Special Civil Suit No.1303 of 1996, learned trial Judge had appointed Court Commissioner for the purpose of taking inventory of the deposit locker. The learned trial Judge directed the plaintiff as also both the defendants to bear the costs of Court Commissioner of Rs.3000/-. Each of the plaintiff and defendants were ordered to deposit Rs.1000/- within a week in the court. It was further made clear that if any of the plaintiff or defendants does not deposit Court Commissioner's fee within the given time, defendant no.1 who had moved the application, shall deposit the entire amount of Rs.3000/- in the court towards Court Commissioner's fee and recover it from others, i.e. defaulting party at the time of preparing costs of the suit.

4. Mr. Mulay submitted that he had deposited his share of

Rs.1500/- in the trial Court. Defendant no.1 who moved the application, however, has not deposited Rs.1500/-. He submitted that he has taken out application dated 16.7.2013 at Exhibit 607 seeking permission of the Court to deposit balance amount of Rs.1500/-. However, the said application, till date, is not decided.

5. Mr. Mulay has invited my attention to the applications Exhibits 92, 364, 541, 395, 159, 304, 339, 311, 387, 394, 379, 519, 525, 543, 551, 552, 553, 566, 580, 588, 477, 579. He submitted that these applications are pending and are not yet decided. He has sought recalling the orders passed in Writ Petitions on the ground that unless these applications are first decided, the suit should not be decided on merits. For example, he submitted that by application at Exhibit 159 dated 12.9.2005, he has prayed for appointing handwriting expert. Defendant no.1 is relying upon the Will. He submitted that the Will is in the handwriting of defendant no.1. By that Will, all others, except defendant no.1, are disinherited. He, therefore, submitted that unless application-Exhibit 159 is decided first, suit should not proceed further. He has relied upon the decision of the Apex Court in the case of O. Bharathan Vs. K. Sudhakaran, AIR 1996 Supreme Court 1140 and in particular paragraph 20 thereof.

6. Mr. Mulay further submitted that by application Exhibit 395 dated 26.6.2009 the petitioner has prayed for appointment of

commissioner for checking accounts of flour-mill. Even this application is not decided till date. He submitted that applications at Exhibits 543, 551, 552, 553, 566, 580, 588 are filed under Order VII, Rule 17 of C.P.C. for amending the plaint. Unless these applications are decided, the petitioner will not be in a position to proceed with the suit. He submitted that before deciding the suit, applications for amendment are required to be decided so that in the event the Court allows the applications, he will be in a position to amend Plaint which will enable him to lead evidence on the basis of the amended plaint.

7. On the other hand, Mr. Deshpande submits that he will take instructions from defendant no.1 as to whether defendant no.1 intends to withdraw application-Exhibit 92. Mr. Deshpande submitted that no case is made out for reviewing the orders.

8. I have considered the rival submissions made by the learned counsel for the parties. I have also perused the material on record. By order dated 10.6.2015, Writ Petition No.337 of 2015 was disposed of. The said petition was instituted challenging the order dated 17.8.2013 passed by the learned trial Judge below Exhibit 599. In paragraph 1 of that order, the prayers made in Exhibit 599 were noted. In paragraph 3, prayers made in application Exhibit 379 dated 26.2.2009 were noted. In paragraph 4, 17, number of applications taken out by the

petitioner were also noted. Thereafter, observations made by the learned trial Judge in paragraph 3 of the order that these applications would not make any hurdle while deciding the suit, were recorded. The learned trial Judge further observed that by filing applications after applications, the petitioner is delaying the matter and is also causing harassment to the defendants. It also amounts to wasting of court's valuable time.

9. In paragraph 5 of that order, it was noted that suit is instituted by the petitioner for partition and separate possession in the year 1996. Issues were framed on 25.5.2002 which were recast in the year 2005. In view thereof, prima facie, it was observed that the trial Court was justified in holding that the petitioner is filing applications after applications with a view to delaying the trial which also causes inconvenience to the Court as the valuable time of the court is lost in deciding such type of applications.

10. Mr. Mulay relied upon the decision of the Apex Court in the case of O. Bharathan (supra) and in particular paragraph 20 thereof. In my opinion, the said decision is not applicable as while disposing of the writ petitions I directed the learned trial Judge to dispose of all pending applications.

11. In the case of **Kamlesh Verma Vs. Mayawati**, AIR 2013 Supreme Court 3301, it is observed by the Apex Court as under :

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is 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 of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view.”

12. The petitioner was not in a position to demonstrate any mistake or error apparent on the face of record in the order under review. In view of the decision of the Apex Court in the case of Kamlesh Verma (supra), I am satisfied that no case is made out for reviewing the orders. Review Petitions fail and the same are dismissed. The learned trial Judge is directed to decide the application-Exhibit-607 as expeditiously as possible and preferably within two weeks from the date of receipt of this order.

(R.G.KETKAR, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.