

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Misc. Civil Application No.317 of 2015 (for Review)

In

Writ Petition No.5622 of 2014

(Decided on 28-1-2015)

(Kamalkishore s/o Late Rangnath Sarda and another v. M/s. Star Paper Mart,
through its Proprietor, Shri Jugalkishore Shreenivas, and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri R.M. Sharma, Advocate for Applicants/Petitioners.

Coram : R.K. Deshpande, J.

Dated : 30th March, 2015

This application seeks review of the order dated 28-1-2015 passed by this Court in Writ Petition No.5622 of 2014. This Court has dismissed the petition filed by the petitioner-landlords challenging the judgment and order of the Appellate Court reversing the decree passed by the Trial Court for eviction and possession of the respondent-tenant.

The learned counsel for the petitioner-landlords does not dispute the findings of the Appellate Court recorded in para 16 of its judgment and order that the respondent-tenant, without disputing the amount of permitted increases in the rent at the rate of 4%, has paid the said amount to the petitioner-landlords immediately upon receipt of the notice under sub-section (2) of Section 15 of the Maharashtra Rent Control Act, 1999, and, therefore, the requirement of payment of 15% interest per annum, as contemplated by sub-section (3) of Section 15 of the said Act, was not at all attracted. He has raised

an issue that the respondent-tenant was required to pay the permitted increases in the taxes, which is also covered by sub-section (2) of Section 15 of the said Act. He submits that undisputedly, in the present case, the said requirement has not been complied with. He, therefore, relies upon the decision of this Court in the case of *Ravindra D. Ahirkar v. Ravikishore s/o Ramkisanji Pashine and another*, reported in 2008(5) *Mh.L.J.* 955. The learned Single Judge of this Court (Shri A.B. Chaudhari, J.) has taken a view that perusal of the provisions of Sections 7(8) and 12 of the said Act shows that water charges/revised water charges have been treated by the Legislature as a part of the rent, and hence it will be governed by Section 15(2) of the said Act.

In the order of which review is sought, it has been held by this Court in the last para as under :

“ The proposition of law cannot be disputed. The finding of fact recorded by the court that the tenant has paid standard rent and permitted increases immediately upon the receipt of the notice under sub-section (2) of Section 15 of the said Act, having not disputed, the question of payment of interest at the rate of 15% per annum on the amount of taxes said to be in arrears does not at all arise.”

While recording the aforesaid finding, this Court has not proceeded on the footing that the petitioner-landlords do not dispute the payment of permitted increases in respect of the taxes, as has been urged by Shri Sharma. This Court has observed that the question of payment of interest at the rate of 15% per annum on the amount of taxes said to be in arrears does not at all arise. This observation proceeds on the footing that sub-section (2) of Section 15 of the said Act does not cover the permitted increases

in the taxes. There was no misconception of facts, as has been urged by Shri Sharma.

Shri Sharma, the learned counsel for the petitioner-landlords, admits that the judgment delivered by this Court in the case of *Ravindra D. Ahirkar*, cited supra, was not cited before this Court when the writ petition was dismissed. This decision has interpreted the provision of sub-section (2) of Section 15 of the said Act and has held that the standard rent and permitted increases therein, include the permitted increases in taxes. The view which I have taken, is in conflict with this view. It is well settled that a decision erroneous in law is certainly no ground of review [See : *Sir Hari Shankar Pal v. Anath Nath Mitter*, reported in *AIR 1949 FC 106*, and *Vasant v. Tukaram*, reported in *AIR 1960 Bom. 485*]. In such a situation, the only remedy available is to approach the higher forum.

Shri Sharma for the petitioner-landlords has relied upon the decision of the Apex Court in the case of *K.G. Derasari and another v. Union of India and others*, reported in (2001) 10 SCC 496, and more particularly para 7 therein, which is reproduced below :

“7. Having considered the rival submissions at the Bar, we have no hesitation to come to the conclusion that the Tribunal was not entitled in a contempt proceeding, to consider the legality of its earlier order which has reached finality not being assailed or annulled by a competent forum. If the Tribunal has not looked into any previous decision of this Court which is the law of the land and by which it was bound, the remedy available to the aggrieved person was to file an application for review. Admittedly, no review application was filed before the Tribunal. In an application for contempt, the Tribunal was only

concerned with the question whether the earlier decision has reached its finality and whether the same has been complied with or not. It would not be permissible for a tribunal or court to examine the correctness of the earlier decision which has not been assailed, and reverse its earlier decision. In that view of the matter, the impugned order cannot be sustained, the same being beyond the powers and jurisdiction of the Tribunal in a contempt proceeding.”

Shri Sharma for the petitioner-landlords has urged when the Court has failed to consider the binding precedents, the only remedy available is to file an application for review. In the decision of the Apex Court in the case of *K.G. Derasari*, it was a case where the questions involved was whether the Administrative Tribunal while considering a contempt petition could issue certain directions which would have the effect of reviewing the original order passed by it. It is not the decision directly on the point as to whether such review application on the ground of not considering the binding precedent, which was not cited while deciding the main matter, is maintainable or not. So far as the decision of this Court in the case of *Ravindra D. Ahirkar* is concerned, it has interpreted the provision of Section 15(2) of the said Act, but it was not brought to the notice of this Court. It is, therefore, not permissible for this Court to review the decision on this ground.

In the result, the Misc. Civil Application for review is dismissed.

Judge.