

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**CIVIL APPLICATION NO.1376/2016
WITH
REVIEW APPLICATION (St) NO.1057/2016
IN
CIVIL REVISION APPLICATION NO.72/2013**

Hausabai Dhulaji Shrirame
and two others.

...Applicants..

Versus

Kantabai w/o Dhulaji Shrirame
& two others.

...Respondents...

.....

Shri S.B. Talekar, Advocate for applicants.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 03.02.2016

ORDER :

1] I have heard the learned Advocate for the applicants on the application for condonation of delay as well as on the review application.

2] For the reasons set out in the Civil Application No.1376/2016, the same is allowed and delay of 778 days is condoned.

3] On the review application, learned Advocate Shri

S.B. Talekar for the review applicants has strenuously submitted that the judgment under review dated 25.10.2013 suffers from an error apparent on the face of the record. He submits that Rule 26 of the Maharashtra Civil Services (Conduct) Rules, 1979, was not brought to the notice of this Court when it decided the Civil Revision Application No.72/2013 by delivering the judgment under review.

4] Reliance is placed upon the judgment of the Apex Court in the case of *Rameshwari Devi v. State of Bihar & others* reported in **AIR (2000) 2 SC 431** and the judgment of the Apex Court in the case of *N.N. Malhotra v. Union of India* (**AIR 2006 SC 18**).

5] It is strenuously submitted that Rule 26 of the 1979 Rules prohibits the Government servant from entering into a marriage when the spouse is living. It is, therefore, stated that the judgment under review, which does not take cognizance of this aspect, suffers from an apparent error.

6] It is further submitted that this Court could not have interpreted Rule 116(6) of the Maharashtra Civil Services (Pension) Rules, 1982, in isolation without considering the effect of Rule 26 of the 1979 Rules. It

is, therefore, submitted that this also constitutes an error apparent on the face of the record.

7] I have considered the strenuous submissions of Shri S.B. Talekar and have gone through the grounds set out in the review application. I have also considered the judgments cited by him.

8] The scope of review is limited as has been laid down by the Apex Court in the case of *Lily Thomas v. Union of India* (**AIR 2000 SC 1650**) as under :-

"52. The dictionary meaning of the word "review" the "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 Arjunshinghji*, **AIR 1970 SC 1273** 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

- 4 -

which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in *S. Nagaraj V. State of Karnataka*, **1993 Supp(4) SCC 595** held :

“Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order the Courts culled out such power to avoid abuse of process or miscarriage of justice. In *Prithwi Chand Lal Choudhary v. Sukhraj Rai*, **AIR 1941 FC 1** that Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* (**1836**) **1**

Moo PC 117 that an order made by the Court has final and could not be altered.

".....nevertheless, if by misprison in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in The House of Lords exercises a similar power or rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through in inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies. Basis for exercise of the power was stated in the same decision as under :

'It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.'

- 6 -

Rectification of an order thus stems from the fundamental principle that justice is above all, it is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Art.137 of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Art.137 of the Constitution. And Cl.(c) or Art.145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order 40 had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order 40, Rule 1 of the Supreme Court Rules this Court has the Inherent power to make such orders as may be necessary in the interest in justice or to

prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength."

"55. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of co-ordinated jurisdiction of equal strength has to be followed and practiced. However, this Court in exercise of its powers under Art. 136 or Art. 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental

- 8 -

rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment."

9] As such, the review applicants cannot have the liberty to re-argue the civil revision application as if this Court is hearing the said civil revision application afresh.

10] Notwithstanding the above, the provision under Rule 26 needs to be considered. Rule 26 of the 1979 Rules reads as under:-

"26 Contracting of marriages.

(1) No Government shall enter into, or conduct, a marriage with person having a spouse living; and

(2) No Government servant, having a spouse living, shall enter into, or contract, a marriage with any person :

Provided that the Government may permit a Government servant to enter into, or conduct, any such marriage as is referred to in clause (1) or clause (2), if it is satisfied that :-

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A government servant who has married or marries a person other than of Indian Nationality shall forthwith intimate the fact to the Government."

11] It is, therefore, apparent that while on the one hand a Government servant is prohibited from entering into a second marriage when the first spouse is living, on the other hand Rule 26(2) enables the Government to permit a Government servant to enter into such a marriage under Clauses (a) and (b) set out therein after it is satisfied that such a marriage is permissible under the personal law applicable to such a Government servant or there are other grounds for so doing.

12] It cannot be ignored that during the entire service tenure of the deceased Dhulaji Shrirame, his employer has not initiated any disciplinary action for having entered into a second marriage. This was also the observation of the Apex Court in the case of *Rameshwari Devi* wherein as well the employee had not been subjected to any disciplinary action during his entire life time and hence

this could not be a ground for denying pension to the rightful claimants.

13] This Court had considered the judgments of the Apex Court in the cases of *Rameshwari Devi and N.N. Malhotra* (supra) while delivering the judgment under review. The judgment of the Apex Court delivered on 18.10.2013, in the case of *Badshah v. Urmila Badshah Godse* in Special Leave Petition (Cri.) No.8596/2013, which was just seven days prior to the delivering of the judgment under review, was also considered by this Court. The Apex Court had ruled in the case of *Badshah* (supra) that when the second wife finds herself left in a lurch and rendered destitute owing to the husband having deserted her, she needs to be protected. Change in social reality is the law of life and when social reality changes, the law must also change. The law of life must be responsive to the change.

14] It would be apposite to reproduce the observations of the Apex Court in paragraph nos.20, 22, 24, 25 and 27 in the case of *Badshah* (supra) as under:-

“20. The law regulates relationships between people. It prescribes patterns of behavior. It reflects the values of society. The role of the

- 11 -

Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both Constitutional and statutory interpretation, the Court is supposed to exercise direction in determining the proper relationship between the subjective and objective purpose of the law.

22. The Court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonize results with justice through a method of free decision—"libre recherche scientifique" i.e. "free Scientific research". We are of the opinion that there is a non-rebuttable presumption that the Legislature while making a provision like Section 125 Cr.P.C., to fulfill its Constitutional duty in good faith, had always

intended to give relief to the woman becoming "wife" under such circumstances.

24. In **Rameshchandra Daga v. Rameshwari Daga (AIR 2005 SC 422)**, the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act in 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not 'immoral' and hence a financially dependent woman cannot be denied maintenance on this ground.

25. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in **Heydon's Case [(1854) 3 C.Rep.7a, 7b]** which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction *ut res magis valeat quam pereat*, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather

- 13 -

than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125, Cr.P.C., such a woman is to be treated as the legally wedded wife.

27. In taking the aforesaid view, we are also encouraged by the following observations of this Court in **Capt. Ramesh Chander Kaushal vs. Veena Kaushal [(1978) 4 SCC 70]** :

"The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause – the cause of the derelicts."

- 14 -

15] In the light of the above, I do not find that the applicants have succeeded in making out any error apparent on the face of the order so as to cause a review. The review application is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)