

IN THE HIGH COURT OF BOMBAY AT GOA.**Civil Review Application No.14/2016.**

Mr. Nuno Xavier Lobo de Souza
Ticlo.

.....Applicant.

Vs.

1. Vito Joao Lobo e Souza Ticlo
and anr.

.....Respondents.

Shri R. Menezes, Advocate for the applicant.
Shri S. Usgaonkar, Senior Counsel with Ms. T. Ghanekar,
Advocate for the respondents.

Coram :- Nutan D. Sardesai,J.
Reserved on:- 15th July, 2016.
Pronounced on:-13th October, 2016

ORDER

The original appellants seeks the review of the judgment passed by this Court dated 15.4.2016 in the Appeal From Order No.4/2016 by the present proceedings coming up for disposal today.

2. Shri R. Menezes, learned Advocate for the applicants contended that the objections were filed by the respondent nos.1 and 2 to the Inventory Proceedings objecting the appointment of the applicant as the Cabeça de Casal. The respondent nos. 1 and 2 had also raised objection to the passive debts listed in the list of assets being misconceived and not admissible and thereupon the trial Court had ordered an inquiry

in which the objections were disposed off vide order dated 11.1.2011. The respondent nos.1 and 2 had subsequently moved an application revealing that they wanted to drop the prayer for the removal of the Cabeça de Casal and to penalise him for giving a false statement. The case of the respondent nos.1 and 2 was that the inquiry could be limited to the extent of the Gift Deed and whether the items nos. 4 to 10 were infact passive debts or not. Besides this Court in the Appeal from Order no.11/2015 had observed vide the order dated 12.6.2015 that the objections regarding the Gift Deed and the Passive Debts had to be dealt with by the trial Court on merits and in accordance with law. Therefore it was imperative and the need of the ends of justice that the appellants be allowed to cross examine the respondent no.1 before being called upon to enter the witness box to offer his evidence. The judgment under review had not considered the various facets of the records which in deed warranted a rejection of the plea raised by the respondent nos.1 and 2 in their application dated 25.8.2015 and it was an error apparent on the face of the record. The applicants were therefore entitled to a review of the order passed by this Court on 15.4.2016 as otherwise grave and irreparable loss would be caused to them.

3. Shri R. Menezes, learned Advocate for the applicants

came to be heard who adverted to paragraph 6 of the judgment under review and submitted that it was a fit case to review the order as prayed for.

4. Shri S. M. Usgaonkar, learned Senior Counsel for the respondents contended that a review was not an appeal in disguise as it was only an error apparent on the face of the record which entitled the parties to seek for its review. He relied in **Thungabhadra Industries Ltd Vs. Govt of A.P. [AIR 1964 SC 1372]** and submitted that all aspects of the case were duly considered including that of the passive debts. There was no iota of error apparent on the face of the record and the order passed by this Court was not open to challenge on any material whatsoever. He placed further reliance in **Smt. Meera Bhanja Vs Nirmala Kumari Choudhury [AIR 1995 SC 455]** finally to submit that there was no case for interference and a review of the judgment was not warranted.

5. In **Thungabhadra Industries Ltd** (supra), a three Judge Bench of the Hon'ble Apex Court spelt out what an error apparent on the face of the record was, distinguished it from a mere erroneous decision holding that there was distinction which was real though it might not always be capable of exposition between a mere erroneous decision and a decision which would

be characterised as vitiated by “error apparent”. A review by no means was an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for correction of the patent error. Where without any elaborate argument one could point to the error and say that here is the substantial point of law which stares one on the face and there could be reasonably no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

6. **Meera Bhanja** (supra), reiterated that it was well settled that the review proceedings are not by way of an Appeal and have to be strictly confined to Order XLVII Rule 1 of CPC. In so far as an error apparent on the face of the record, it must be such an error which must strike one on mere looking at the record and not require any long drawn process or reasoning on points where there may conceivably be two opinions. A reference was made to the observation of the Court in **Satyanarayan Laxminarayan Hegde Vs. Mallikarjun Bhavanappa Tirumale, [AIR 1960 SC 137]** where it was observed that an error which had to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be

established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ.

7. This Court while appreciating the case of the parties had considered the applications moved by the respondents apart from the objections, replies filed by the applicants apart from the order of this Court and rendered finding that enquiry had attained a quietus and what really remained for the respondents to prove were the passive debts and to lead evidence on the item nos. 4 to 10, if any. For that matter this Court had duly considered the contentions raised by the applicants which are now sought to be re-agitated under the garb of review and post the order dated 15.4.2016. Besides due reference was also made to the proceedings concerning the Gift Deed but which was dismissed without adjudication on merits. All the aspects which were canvassed were duly considered and therefore, it is not open to the applicants to seek a review of the judgment by way of the present application contending afresh that the issues were not considered and that this Court had to reject the plea of respondent nos. 1 and 3 qua their application dated 25.8.2015.

8. The issue on the status of the applicant as the Cabeça de Casal, the withdrawal of the suit qua the Gift Deed

and the validity of the item nos.4 to 10 as the passive debts were duly considered in the Appeal from Order.

9. No case whatsoever is made out for a review of the judgment and therefore the application is dismissed.

NUTAN D. SARDESSAI, J.

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