

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 898 OF 2015

IN

STAMP NUMBER (APPLICATION) NO. 2544 OF 2015

V. M. Salgaocar & Brother
Private Limited (Palm Hotels)
(India) Ltd.,
Vasco da Gama, Goa.

... Applicant/Petitioner
(Original Respondent no. 7)

Versus

1. The Goa Foundation & 8 Others ... Respondents

Mr. T. N. Subramaniam, Senior Advocate with Mr. Firdosh Pooniwala, Mr. Rishith Badiyani and Mr. J. Supekar, Advocates for the Applicants.

Ms. Norma Alvares, Advocate for the Respondent nos. 1 and 2.

Mr. P. Dangui, Addl. Government Advocate for the Respondent nos. 4, 5, 6 and 8.

Mr. H. D. Naik, Advocate for the Respondent no. 3.

Coram :- **F. M. REIS,**
NUTAN D. SARDESSAI, JJ.

Date: 30th June, 2016

ORDER (*Per F. M. Reis, J.*)

Heard Mr. Subramaniam, learned Senior Advocate appearing for the Applicants, Ms. Norma Alvares, learned Counsel appearing for the Respondent nos.1 and 2, Mr. Naik, learned Counsel appearing for the Respondent no.3 and Mr. P. Dangui, learned Addl. Government Advocate

appearing for the Respondent nos. 4, 5, 6 and 8.

2. This is an application filed by the Original Respondent no. 7 for review of the Judgment passed by this Court dated 29.06.2015 along with an application for condonation of delay.

3. As pointed out to the learned Counsel and by consent, it was agreed to examine the merits of the Review Petition alongwith the application for condonation of delay.

4. Mr. Subramanian, learned Senior Advocate appearing for the Applicants, has pointed out that the Applicants are seeking review of the Judgment essentially on two counts one that they have now obtained a copy of the scanned plan from the Panjim Municipality which clearly shows the existence of the swimming pool which would have an important bearing in the matter in controversy. Learned Counsel has further pointed out that there was material on record to show that the project of the Petitioners is behind the Government retaining wall which is an authorised structure. It is further pointed out that the swimming pool is permitted within the prohibited area of CRZ-III and, as such by same logic, the swimming pool should be permitted in the petitioners' property which is in CRZ-II area. It is also pointed out that this Court has examined the matter on an assumption that the restrictions in terms of CRZ-III would be applicable when the subject property is located in

CRZ-II.

5. On the other hand, Ms. Norma Alvares, learned Counsel appearing for the Respondent nos. 1 and 2/the Original Petitioner, has opposed the above Review Petition. It is pointed out that a review cannot be an Appeal in disguise. It is further submitted that this Court has taken a categorical view that the alleged retaining wall is not an authorised structure as it was only a concrete slab. It is further pointed out that the Petitioners themselves accept that the subject land is in CRZ-II and, as such, the benefits reserved for CRZ-III in terms of the Notification of 1991 cannot be extended to the subject property. It is further pointed out that this Court has also noted that the application for permission was obtained only after the coming into force of the CRZ 1991 Notification and, consequently, the contention of the Petitioner-the Original Respondent no. 7 that the work had started before the coming into force the said Notification is totally misplaced. It is accordingly pointed out that the petition be rejected.

6. We have considered the submissions of the learned Counsel and we have also gone through the records. It is now well settled that a Review cannot be an Appeal in disguise. Whilst examining whether the CRZ Notification of 1991 which came into force on 19.02.1991 was applicable to the subject project of the Petitioner, we have considered at Para 12 and 13 of the Judgment that the project of the Original Respondent no. 7 was

considered at the meeting held on 14.06.1991 i.e. after the coming into force of the said CRZ Notification. It is also noted that the records do not reveal any application for any permission from the statutory authorities have been issued in favour of the Original Respondent no. 7 the coming into force of the said Notification of 1991. In such circumstances, the contention of the learned Senior Advocate appearing for the Applicant-original Respondent no. 7, that the Judgment requires review on that count cannot be accepted. Even in the affidavit filed on behalf of Respondent no. 7, it has been clearly mentioned that the planning permission is dated 29.11.1991 and the clearance by the GSCE is dated 14.06.1991.

7. With regard to the next contention of the learned Senior Advocate, we find that Para 24 of the said Judgment, the matter has been examined on the basis that the subject land is located in CRZ-II. The provisions with regard to CRZ-III were examined in the said Judgment at Para 27 in the context of the contention of the petitioner that the remnants of stones in the river be considered as an authorised structure. The contention that the retaining wall was an authorised structure has also not been accepted. Considering that an authorised structure itself has to have a FSI, plinth area and subscribe to the norms of the density. The fact that CZMP was not approved by the Central Government when the permissions were granted, has also been examined at Para 30 of the said Judgment and, as such, the contention of the learned Counsel appearing for the Applicant that

this aspect has not been considered, cannot be accepted.

8. At Para 34 of the said Judgment, we have, prima facie, taken a view after holding that the light house referred to in the plan prepared by the Commissioner was an authorised structure that the swimming pool and the retaining wall would come on the seaward side of an imaginary line to be drawn as stated therein.

9. In such circumstances, the disclosure of the Swimming pool even in the plan which came to be approved after the coming into force of the CRZ Notification 1991 would have no bearing to the view taken by us whilst disposing of the said Writ Petition filed by the Respondent no. 1 herein/the Original Petitioner. As such, we find that though there are no justifiable grounds stated in the application as to why the said plan was not produced earlier when the Petition and the affidavits in reply were filed on behalf of Respondent no. 7 nevertheless, we find that such plan would not in any way have any bearing to the view taken whilst passing the Judgment. The contentions raised by the learned Senior Advocate appearing for the Applicant are essentially challenging the findings arrived at by this Court whilst passing the said Judgment dated 29.06.2015 which cannot be a ground for review in terms of law. The Court whilst examining a Review Petition has limited jurisdiction circumscribed by definite limits fixed by the language used under Order 47 Rule 1 of the Civil Procedure Code. It can

allow a review on specified grounds as mentioned therein. The application for review on the ground of discovery of new material should be considered with great caution and should not be granted very lightly. In exercise of review jurisdiction, the Court cannot re-hear the matter on merits afresh.

10. In this connection, the Apex Court whilst dealing with a Review Petition filed based on additional documents and photographs reported in **(2013) 15 SCC 534** in the case of **N. Anantha Reddy vs. Anushu Kathuria**, has observed at Para 6 thus :

“6. A careful look at the impugned order would show that the High Court had a fresh look at the question whether the appellant could be impleaded in the suit filed by Respondent 1 and, in the light of the view which it took, it recalled its earlier Order dated 8.06.2011. The course followed by the High Court is clearly flawed. The High Court exceeded its review jurisdiction by reconsidering the merits of the order dated 08.06.2011. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits.”

11. Taking note of the said observations and for the reasons stated herein above, we find that there is no error apparent on the face of record which would call for review of the said Judgment.

12. Hence, we find no merit in the above Petition and, as such, both the applications stand rejected.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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