

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.128 OF 2016

IN

WRIT PETITION NO.11027 OF 2015

Ramesh Mahadeorao Ganorkar ... Petitioner

Versus

Mumbai District Central Co-operative Bank Ltd. And Others ... Respondents

• • • • •

Mr. Abhijeet A. Desai for the Petitioner.

Mr. Sampatrao Pawar for Respondent No.1.

Mr. Shridhar Anantrao Patil for Respondent No.2.

• • • • •

CORAM : K.K. TATED, J.

DATE : 5 OCTOBER, 2016

P.C. :

Heard learned Counsel for the Parties.

2 By this review petition, the Applicant is seeking review of the order
dated 28 July 2016, passed by this Court in Writ Petition No.564 of 2016.

3 In that Petition, the Applicant-original Petitioner challenged the order dated 31 August 2015, by which the President, Co-operative Appellate Court M.S., Mumbai, dismissed his application for condonation of delay of 5 months and 12 days in filing the appeal challenging the judgment and award dated 28 February 2014 passed by the Co-operative Court, Mumbai in Dispute No.CC/1/33/2010.

4 Mr. Desai, the learned Counsel for the Applicant submits that the Applicant is senior citizen. He submits that though the guarantor papers were not signed by the Applicant, the Trial Court passed award jointly and severally. He submits that Co-operative Court failed to consider all these facts. He further submits that even the Appellate court without considering the merits of the matter, dismissed their application for condonation of delay. He submits that the Applicant has good chance to succeed on merit. Learned Counsel for the Applicant submits that the review petition can be filed on the basis of the subsequent event also. In support of his submissions, he relied on judgment of the Apex Court in case of **Board of Control for Cricket Vs. Netaji Cricket Club & Others, in Appeal (Civil) 237-239 of 2005, dated 10 January 2005**. He relies on the following portion of the said judgment, which reads thus :

“We are, therefore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be *ex facie* bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What

would constitute sufficient reason should depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

It is true that in *Moran Mar Basselios Catholicos and Another Vs. The Most Rev. Mar Poulouse Athanasius and Others* [(1955) 1 SCR 520], this Court made observations as regard limitations in the application of review of its order stating :

"Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order XLVII, rule 1 of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may also a review on three specified grounds, namely (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the fact of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule", but the said rule is not universal.

Yet again in *Lily Thomas (supra)*, this Court has laid down the law in the following terms :

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again which 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 Arjunsinghji*, 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 which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error.”

(Emphasis supplied) It is also not correct to contend that the court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned senior counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29 September, 2004, the subsequent event may be taken into consideration by the court for the purpose of rectifying its own mistake.”

5 The learned Counsel for the Applicant submits that because of mistake on the part of the Advocate, litigant should not be suffered. In support of this proposition, he relies on judgment of this Court in case of *Bombay Latex & Dispensions Pvt. Ltd. & Others Vs. Jethalla Amritlal Doshi* (deleted) and Others, in Civil Application No.26 of 2011 in Civil Revision Application (St) No.32 of 2011 with Civil Application No.51 of 2011, decided on 11 November 2011. He relies on paragraph-7 of the said judgment, which reads thus :

“Thus this shows that aforesaid Respondents have made allegation against their own Advocate. It is not possible to lose sight of the fact that the Advocate had, in fact, applied for certified copies on 14th June, 2010 but the delivery of the said copies were taken on 19th April, 2010 i.e. after this Court directed implementation of the Advocate on 3rd April, 2011. One thing is certain that, apparently, disputes and the differences had arisen between the Advocate for the Applicants in the Small Causes Court and the Applicants themselves and there was lack of communication, which is evident from the fact that though certified copies were

applied on 14th June, 2010, within five days of the impugned Judgment and Order and were ready on 16th July, 2010; till the date of dispossession in execution of the decree on 15th October, 2010, the delivery of the said copies has not been taken. Whether the Advocate for the Applicants should have himself taken delivery on his own or whether relation between the Advocate and the Applicants and there is no need to go into those aspects in great details. The fact remains that Advocate had applied for the certified copies on 14th June, 2010.”

6 Learned Counsel for the Applicant also argued the matter on its own merits, submitting that how the Applicant is not liable to pay loan amount of Karkhana. On the basis of this submissions and facts, learned Counsel for the Applicant submits that the review application may be allowed and the impugned order passed by this Court on 28 July 2016 in Writ Petition No.11027 of 2015 be set aside and the matter be heard on its own merits.

7 Learned Counsel appearing on behalf of Respondent Nos.1 and 2 vehemently opposed the present review petition.

8 I heard both the sides.

9 It is to be noted that in review petition, there is very limited scope for recalling or setting aside the order. It is to be noted that the impugned order dated 28 July 2016 in Writ Petition No.11027 of 2015 was passed after hearing both the sides and on the basis of another connected matter i.e. Writ Petition No.564 of 2016. Applicant is trying to re-argue the entire

matter in the name of review. Considering these facts, I do not find any merit in the review petition. Same stands rejected.

(K.K. TATED, J.)