

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 2696 OF 2016
IN
CIVIL APPLICATION NO. 2082 OF 2016
IN
WRIT PETITION NO. 5312 OF 1996**

Rajendra Shrirang Samdale	... Applicant
V/s.	
Vithaldas Gopilal Marda	... Respondent

Mr. S.G. Deshmukh for the Applicant.
Mr. Ajay Joshi for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 13/12/2016**

PC.:

. Heard learned Counsel for the parties.

2 By this application , the Applicant is seeking to review the order dated 18.08.2016 passed by this Court in Civil Application No. 2082 of 2016 which was for restoration of Writ Petition No. 5312 of 1996, which was dismissed for default in view of order dated 16.06.2016.

3 Writ Petition No. 5312 of 1996 was on board for final hearing on 09.06.2016. On that date, no one appeared on behalf of applicant/original petitioner. Hence, the matter was adjourned to 10.06.2016 under caption for dismissal. Order dated 09.06.2016, reads thus:

“Matter called out. None present. Stand over to 10.06.2016 for

dismissal.”

4 As no one appeared on behalf of applicant/original petitioner before this Court on 16.06.2016 this Court (Coram: R.P. SondurBaldota, J) passed following order:

“ Though, the petition is shown on the board for dismissal, petitioner and his Advocate are absent. Petition, therefore, dismissed for default.”

5 Thereafter, the applicant preferred Civil Application No. 2082 of 2016 on 18.06.2016 for restoration of Writ Petition No. 5312 of 1996 on the ground that on that date, the Advocate on record was held up in another matter and therefore, no one remained present on behalf of applicant/petitioner. That Civil Application No. 2082 of 2016 vehemently opposed by the Respondent. After hearing both the sides, this Court by order dated 18.08.2016 dismissed the Civil Application No. 2082 of 2016 which was for restoration of Writ Petition No. 5312 of 1996. Hence, the applicant preferred the present Civil Application for review and restoration.

6 The learned counsel Mr. S.G. Deshmukh appearing on behalf of the applicant submits that Writ Petition No. 5312 of 1996 was on board for final hearing on 22.01.2016. On that date, no one appeared for parties. Hence, matter stands dismissed for non prosecution. He submits that immediately thereafter, the applicant's Advocate filed praecipe dated 28.01.2016 stating that matter was wrongly dismissed for default on 22.01.2016 in the following circumstances:

“I on 21.01.2016 had filed my leave note for 22nd and 25th of January, 2016 which had been duly noted by the office of this Hon'ble Court (copy annexed).”

7 The learned counsel for the applicant submits that papers have produced before this Court on 29.01.2016. After considering the fact that the leave note was duly filed by the Advocate for the applicant, this Court by order dated 29.01.2016 recalled their earlier order dated 22.01.2016 and matter was restored for final hearing on 11.02.2016 at 3.00 p.m. High on Board. He submits that this itself shows that there was no mistake on the part of the Advocate for applicant when the matter stands dismissed for default by order dated 22.01.2016.

8 The learned counsel for the applicant submits that this Court in order dated 18.08.2016 specifically recorded that the earlier also the matter stood dismissed for default by order dated 22.01.2016. He submits that this Court was under impression that earlier because of mistake on the part of the Advocate for applicant, matter stood dismissed for default on 22.01.2016. He submits that those facts were not stated by them in their civil application No. 2082 of 2016 because this court restored the matter without insisting the applicant to file civil application and considering the leave note of applicant's advocate.

9 The learned counsel for the applicant submits that though all these facts were known to the Advocate for the Respondent, the same was not disclosed by him. He submits that because of mistake on the part of Advocate, the litigant should not suffer. He submits that the

applicant has good chance of success in the present Writ Petition . He submits that the applicant is tenant of the suit property for last several years through his ancestral. He submits that if the impugned order dated 18.08.2016 is not reviewed, then irreparable loss and injury will be caused to the applicant. He submits that in the interest of justice, this Hon'ble Court be pleased to review and recall the order dated 18.08.2016 in Civil Application No. 2082 of 2016 and restore the Writ Petition No. 5312 of 1996 on file for hearing on its own merits by allowing Civil Application No. 2082 of 2016.

10 The learned Counsel Mr. Ajay Joshi appearing on behalf of Respondent vehemently opposed the present Civil Application. The respondent filed his affidavit-in-reply dated 23.10.2016 raising several objections.

11 The learned Counsel for the Respondent submits that Review Petition as is filed by the Applicant is not maintainable in law. He submits that the Applicant failed to disclose any reason and/or made out any ground for reviewing the order dated 18.08.2016 passed by this court. He submits that the reason given by the Applicant in the present Review Petition is that because of mistake on the part of the Advocate, the matter stands dismissed. He submits that, that cannot be ground for the reviewing the order dated 18.08.2016.

12 The learned Counsel for the Respondent submits that in the present application to review the earlier order dated 18.08.2016, the Applicant relying on new grounds which were not pleaded in his earlier

Civil Application No. 2082 of 2016. Hence, those grounds cannot be considered to review the order dated 18.08.2016.

13 The learned Counsel for the Respondent submits that the Applicant failed to make out any case to show error on the face of the impugned order dated 18.08.2016. He submits that unless and until same is pointed out, there is no question of entertaining the present application for review of the order dated 18.08.2016. He submits that this court passed the order dated 18.08.2016 by considering the earlier orders passed by this Court from time-to-time. Hence, there is no question of entertaining the present application and same is required to be dismissed.

14 I heard both the sides at length. It is to be noted that this Court after considering both the sides' arguments at length passed the impugned order dated 18.08.2016 in Civil Application No. 2082 of 2016. In that application, the reason given by the Applicant for restoration of Writ Petition was in paragraph 2. At the time of passing the impugned order, this Court has considered the earlier orders passed by this Court from time-to-time. Even, when the Writ Petition was on board from 09.06.2016 no one appeared on behalf of Applicant, the same was adjourned to 10.06.2016. On next date of hearing, the matter was shown under caption 'for dismissal' and in spite of that, no one appeared on behalf of Applicant/Petitioner. Bare reading of the application as it is filed by the Applicant, does not disclosed any ground for reviewing the earlier order. It can be reviewed, if the mistake on the face of order is pointed out and the same is not in the present Civil

Application.

15 Review of judgment may be allowed on three grounds namely:-

- a) discovery of new and important matter of evidence which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed, or
- b) some mistake or error apparent on the face of the order.
- c) for any other sufficient reason.

These three points are not placed by the applicant in Civil Application.

16 Hence, Review of the earlier order dated 18.08.2016 stands rejected.

(K.K.TATED, J.)