

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 1 OF 2015
IN
CIVIL REVISION APPLICATION NO.508 OF 2013**

Girish Motilal Bhuta

..Petitioner.

Vs

Smt Tolabai Nagu Namde and
Ors

.. Respondents

Mr. C.D.Karkhanis i/b Mr Rahul S Kale, Advocate for
Petitioner.

Ms. Lalita Panchkshari, Advocate for Respondent No.2.

Ms Indrayani M. Koparkar, Advocate for Respondents no. 1
and 3

CORAM : R.G.KETKAR,J.

DATE : 18/11/2016

PC:

1. Heard Mr. C.D.Karkhanis, learned counsel for the
petitioner and Ms. Indrayani Koparkar, learned counsel for
the respondents no.1 and 3 at length.

2. By this Petition under section 114 read with Order 47,
Rule 1 of the Code of Civil Procedure, 1908, (for short, 'C.P.C'),
the petitioner has sought review of the order dated 5.9.2014
passed by this Court in Civil Revision Application No. 508 of
2013. By that order, after hearing the learned counsel
appearing for the parties, Civil Revision Application was

dismissed. The decree passed by the Courts below under sections 13(1)(k) (change of user), section 13(1)(c) (nuisance and annoyance), Section 13(1)(a) read with section 108(o) of the Transfer of Property Act, 1882 (for short, 'T.P.Act'), Section 13(1)(g) (bonafide and reasonable requirement) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act') was confirmed.

3. In support of this petition, Mr Karkhanis strenuously contended that the order challenged in this review suffers from several errors of law apparent on the face of record. He submitted that Mr Samudra, Engineer has submitted report at Exhibit 94 regarding condition of the building. The petitioner herein was not given opportunity to deal with that report. The Courts below however relied upon this report while passing the eviction decree against the petitioner. As the petitioner was not given opportunity to deal with that report, the order passed by this Court deserves to be recalled.

4. Mr Karkhanis has invited my attention to paragraphs 6 and 7 of the order dated 5.9.2014. In paragraph 6, this Court has referred to paragraph 26 of the judgment of the learned District Judge in Civil Appeal No. 368 of 2011. In paragraph 26, the learned District Judge recorded that both the

defendants have categorically admitted in their evidence that the suit premises were hired by the husband of defendant no.1 prior to 1947 for sale of soda water and lemon bottles, for sale of food colours, for sale of spare parts of soda water manufacturing machine and accordingly it was used till the year 1979. The defendants admitted that since 1980 they have installed grinder, mixer and boiler in the suit shop for manufacture of liquid, sold food colours, essence and chemicals. The learned District Judge thereafter observed that no documentary evidence was placed on record showing that the defendants have installed the machinery with the permission of the plaintiffs.

5. In paragraph 27, the findings recorded by the learned District Judge from paragraphs 29 to 31 were considered. In paragraph 30, the learned District Judge observed that while seeking certificate of registration of defendant's unit as a small scale industrial unit, he has shown address of 833, Nana Peth, Pune instead of address of Suit premises being C.T.S.No.333, Nana Peth, Pune. It was thereafter observed that in order to avoid consent of the plaintiff in the capacity of landlords and the consent of the occupiers of the suit house, the defendant had given false address of C.T.S. No.833, Nana

Peth in order to mislead the Manager of District Industries Centre, Pune for issuing registration certificate at Exhibit 127.

6. Mr. Karkhanis submitted that the said finding is not based on any material on record and therefore this Court was not justified in passing decree under section 13(1)(k) of the Act, He further submitted that the order dated 5.9.2014 may be recalled and the Civil Revision Application may be heard afresh as earlier Advocate did not advance the submissions to the effect that the plaintiffs have misled the courts below and obtained eviction decree by playing fraud.

7. On the other hand, Ms Koparkar submitted that no case for review is made out. She submitted that the plaintiffs have already filed Dakhast No.135 of 2014 for executing decree. In that Dakhast the plaintiffs filed application Exh.28 for issuing warrant of possession. Accordingly on 14.11.2016 the learned trial Judge allowed the application and issued warrant of possession under Order 21, Rule 35 of C.P.C. for executing the same on 19.11.2016.

8. Ms Lalita Panchakshari intervened in the matter on behalf of wife and on of respondent no.2 Prakash. She submitted that respondent no.2 Prakash is already married and the suit is instituted under section 13(1)(g) of the Act on

the ground that he wants to marry. As he was already married, the ground set up in the suit for recovery of possession under section 13(1)(g) was neither reasonable nor bonafide and in fact false ground was set up for claiming possession.

9. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. In the case of **Kamlesh Verma Vs. Mayawati**, AIR 2013 Supreme Court 3301, the Apex Court has laid down certain parameters of review petition. The same reads as under :

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. “

Mr Karkhanis submitted that Mr Samudra has submitted report at Exhibit 94. The petitioner herein was not given opportunity to deal with that report. Perusal of the order

dated 5.9.2014 passed by this Court does not even remotely refer to report Exhibit -94. This, therefore, cannot be a ground for review of the order.

10. Mr. Karkhanis invited my attention to paragraph 6 of the order dated 5.9.2014. The findings recorded in paragraph 6 are based upon the evidence adduced by the defendants which was considered by the learned District Judge in paragraph 26 to 32. Mr Karkhanis did not point out that the findings recorded by the learned District Judge and for that matter of this Court in paragraph 6, are not borne out from the evidence of the defendants. In view thereof, this cannot be a ground for review of the order dated 5.9.2014.

11. Mr. Karkhanis further submitted that this Court wrongly recorded a finding in paragraph 7 as regards not obtaining consent of the plaintiffs for obtaining certificate of registration as a unit of small scale industry. It is also not possible to accept the submission. The findings recorded in paragraph 7 are based upon evidence on record as also admissions of the defendants. The learned District Judge has considered this aspect in paragraphs 29 to 31. As noted earlier, in paragraph 30 the learned District Judge recorded a categorical finding that the defendants deliberately gave wrong

address. Thus, the findings recorded by this Court are based upon the evidence on record.

12. Mr.Karkhanis argued this Petition as if he was arguing an appeal. He was not in a position to point out any error apparent on the face of record. In the case of **Kamlesh Verma (supra)** the Apex Court has held that an error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. Hence, no case is made out for reviewing the order dated 5.9.2014 Petition fails and the same is dismissed.

13. As far as intervention on behalf of Ms.Panchkshari is concerned, they cannot be permitted to intervene in this proceeding as admittedly disputes are pending inter-se between the landlords. The wife and son are not party to the

proceedings. They cannot be allowed to intervene for the first time that too in Review Petition.

14. At this stage, Mr Karkhanis orally applies for stay of this order for a period of one month. Ms.Koparkar opposes the application. Oral application for stay is rejected.

(R.G.KETKAR, J.)