

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Review Petition No.156 OF 2016
IN
Civil Application NO. 1603 OF 2012
IN
Review Petition [St.] NO. 19584 OF 2011
In
Writ Petition No.6450 of 1995

Janu Raghunath Farle and others	...Applicants
<i>Versus</i>	
The Maharashtra Housing And Area Development Authority And others.	...Respondents

....
Mr.Ahmad Abdi and Vishal Kasbekar i/b. P.M. Motwani,
Advocate for the Applicants.
Mr.V.M. Parshurami, Advocate for Respondent No.1.
Mr. R. M. Vasudeo, Advocate for Respondent No.3.
Mr.S.D. Rayrikar, AGP, for Respondent No.2 State.
....

CORAM : R. G. KETKAR, J.

DATE : 22nd NOVEMBER, 2016

P.C.

1. Heard Mr.Abdi, learned Counsel for the petitioners, Mr.Parshurami, learned Counsel for respondent No.1, Mr. Rayrikar, learned AGP for respondent No.2–State and Mr. Vasudeo, learned Counsel for respondent No.3, at length.

2. By this Review Petition filed under Section 114 read with Order XLVII Rule 1 of C.P.C. the petitioners seek review of the order dated 15.10.2016 passed by this Court in Civil Application No.1603/2012 in Review Petition [St.] No.19584/2011.

3. In support of this Petition, Mr. Abdi strenuously contended that the order dated 15.10.2016 deserves to be reviewed. In the first place, said order is *per incuriam*. This Court did not consider the order dated 25.3.2011 passed by the learned Single Judge of this Court in Notice of Motion No.1187/2011 in Suit (L) No.581/2011 as also the order of the Division Bench dated 17.8.2011. He submitted that the learned Single Judge held that the agreement dated 1.12.2003 is void as it is contrary to Section 36A of the Maharashtra Land Revenue Code, 1966. He submitted that though in terms of order dated 15.10.2016 does not record a specific finding as regards validity or otherwise of the said agreement, a fair reading of the said order shows that this Court has held that said agreement is valid. He, therefore, submitted that the order dated 15.10.2016 is *per incuriam* of the order dated 25.3.2011 passed by the learned Single Judge in Notice of Motion No.1187/2011.

4. He further submitted that there is an error apparent on face of record in order dated 15.10.2016. He

invited my attention to paragraph-13 of the order. In paragraph-13, it was recorded that the learned Single Judge of this Court (Coram: D.B. Bhosale, J., as learned Chief Justice then was) dismissed the application for condonation of delay on 21.12.2011. The learned Judge was available till his transfer to Karnataka High Court in November,2012. He submitted that the learned Single Judge was transferred to Karnataka High Court on 6.1.2012. As Civil Application No.744/2010 for condonation of delay was dismissed on 21.12.2011 and hardly within 10 to 15 days the learned Judge was transferred to Karnataka High Court, it cannot be said that the petitioners deliberately did not move same Judge. In fact they were unaware that the learned Judge would be transferred to Karnataka High Court. He, therefore, submitted that there is error apparent on the face of record. He further submitted that the petitioners were not aware of dismissal of Civil Application No.744/2010. He submitted that as there is error apparent on the face of record, the order deserves to be reviewed.

5. Mr. Abdi submitted that this Court also referred paragraph-5 of the application for condonation of delay, wherein the petitioners averred that they approached their builders. He submitted that this is also factually incorrect. Mr. Abdi further submitted that the

petitioners are still in possession and this fact is substantiated by 7/12 extracts. However, this aspect is not considered by this Court while dismissing the application for condonation of delay. While dismissing the application for condonation of delay this Court also did not consider the fact that whether the petitioners received the consideration for transferring 60% land.

6. On the other hand, learned Counsel for the respondents supported the impugned order and submitted that no case is made out for reviewing the order dated 15.10.2016.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the petitioners have filed Review Petition under Section 114 read with Order XLVII Rule 1 of C.P.C.. 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.”

8. Applying the tests laid down by the Apex Court in above decision, it is necessary to consider whether the petitioners have made out a case for review of the order dated 15.10.2016. The petitioners have filed Civil Application No.1603/2012 for condonation of delay of 6 years 6 months and 24 days in filing Review Petition in this Court. The petitioners instituted Review Petition (St.) No.19584/2011 for review of the order dated 14.12.2004 passed by this Court in Writ Petition No.6450 of 1995. Writ Petition was disposed of in terms of the consent terms dated 14.12.2004 entered into by and between the

petitioner therein, Maharashtra Housing and Area Development Authority (respondent No.1, MHADA for short) and respondent No.1A Janu Raghunath Farle, respondent No.1B Mukund Raghunath Farle and respondent No.1C Rajaram Raghunath Farle. Writ Petition No.6450/1995 was disposed of on 14.12.2004 on the basis of the consent terms dated 14.12.2004. Order dated 14.12.2004 recorded the presence of Assistant Land Manager (MHADA) and respondents No.1(a) to 1(c), present petitioners. On the same day, other Writ Petition No.6376/1995 was disposed of in terms of consent terms dated 14.12.2004. In that Petition also Review Petition [Stamp] No.5421/2010 was filed. As there was delay of more than five years, Civil Application No.744/2010 for condonation of delay was taken out. By order dated 21.12.2011, the learned Single Judge of this Court (D.B. Bhosale, J., as the learned Chief Justice then was), who had disposed of Writ Petition, dismissed the application thereby refusing to condone the delay.

9. In the present case, it is not in dispute that the Review Petition along with application for condonation of delay was filed in this Court on 26.7.2011. However, the application for condonation of delay was not moved before the same Judge more so when case is made out that though this Court recorded presence of the petitioners,

they were not present in the Court. In that context, it was expected from the petitioner to have moved the same Judge. Even accepting that the learned Judge was available in this Court till his transfer to Karnataka High Court on 6.1.2012, nothing prevented the petitioners moving the same Court between 26.7.2011 and 6.1.2012 before his transfer. In any case when identical Civil Application for condonation of delay was filed and which was dismissed on 21.12.2011, the petitioners should have requested the Court to decide this application as well. It is in that context it was observed in paragraph-13 of the order dated 15.10.2016 that there was no explanation as to why the petitioners did not move same Court. As the petitioners were disputing their presence in the Court, they should have moved same learned Judge who disposed of Writ Petition on 14.12.2004.

10. Mr. Abdi submitted that the order dated 15.10.2016 is *per incuriam* of order dated 25.3.2011. He was however not in a position to point out that any finding was recorded by this Court in order dated 15.10.2016 which is contrary to the order dated 25.3.2011. In fact this Court did not record any finding as regards validity or otherwise of the agreement of sale dated 1.12.2003. In view thereof, it cannot be said that the order dated 15.10.2016 is *per incuriam*.

11. Basically while considering the application for condonation of delay, this Court has considered the length of delay, namely, 6 years 6 months and 24 days as also conduct of the petitioners. This Court also considered the fact that another application for condoning the delay of more than five years was also rejected by this Court. Basically the question is whether the petitioners made out sufficient cause for condoning the delay and that was answered in the negative.

12. Mr. Abdi further submitted that this Court did not deal with the aspect whether the petitioners received any consideration for transferring 60% of the land as also did not consider whether the petitioners are in possession as is evident from 7/12 extracts.

13. This Court while considering the application for condonation of delay did not go into the merits in the case and considered the conduct of the petitioners herein.

14. Mr. Abdi 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 reheard 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 15.10.2016. Review Petition fails and the same is dismissed.

15. At this stage, Mr. Abdi orally applies for stay of this order. Learned Counsel for the respective respondents oppose the prayer for stay on the ground that the petitioners were directed to pay costs of Rs.50,000/- each within four weeks failing which the Collector, Mumbai Sub-urban District was directed to recover the same as land revenue. The petitioners have not paid the costs. They further submitted that this Review Petition is frivolous and, therefore, deserves to be rejected with costs.

16. As the petitioners have not paid the costs as ordered, oral application for stay is refused. As I have already imposed costs while dismissing the application for

condonation of delay, I do not propose to further saddle the petitioners with costs.

17. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)