

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

***CIVIL APPLICATION (REVIEW) NO.6 OF 2015
IN
SECOND APPEAL NO.99 OF 2009***

Shri Nascimento Milagres Pereira & Ors Applicants

Versus

Shri Naveen Shanker Lokure & Ors Respondents

Mr. C. A. Coutinho, Advocate for the Applicants.

Mr. Sudesh Usgaonkar and Ms. R. Pereira, Advocates for the Respondent Nos. 1 and 2.

Coram : N.M. Jamdar, J.

Date : 7 December 2017.

ORAL ORDER :

By this application, a review is sought of the judgment and order passed by the learned Single Judge of this Court (*U.V. Bakre, J*) in Second Appeal No.99 of 2009 on 19 September 2014.

2. The review Applicants were the Respondents in Second Appeal. The Second Appeal was filed by the Respondents herein challenging the judgment and order passed by the learned District Judge, South Goa. The learned Single Judge, as it is apparent from

the judgment which runs to 27 pages, considered the rival contentions and allowed the Second Appeal setting aside the order passed by the learned District Judge and remanded the proceedings to the First Appellate Court. At that time the review Applicants were represented by a Senior Advocate and an Advocate on Record. As the decision shows, after the arguments were concluded on 28 August 2014, the judgment was pronounced on 19 September 2014.

3. When the review application came up for consideration before me, it was noticed that the review application was filed on 27 October 2014 through an another Advocate. An objection was raised by the learned counsel for the Respondents that the learned Single Judge (*Bakre, J*) who had rendered the decision was available till 26 February 2015, till he demitted the office and no attempts were made to get the review heard by the same learned Judge and now by changing the Advocate, a rehearing was sought. In view of the position, the following order came to be passed on 2 November 2017.

“From the record it appears that the Judgment and order under Review was passed on 19 September 2014 after hearing the Advocates for the parties. The Review was filed on 27 October 2014. The Review for the first time came up for consideration before the Court on 9 March 2016. Record does not show any

attempt made by the Applicant to circulate the Review before 9 March 2016. The Review is placed before the Court since the learned Judge (U. V. Bakre) who is no longer part of the Bench. The Court must be satisfied that the application is not an abuse of the Review jurisdiction and an attempt is not made to seek rehearing of the matter by changing the Advocate after the learned Judge is not a part of the Bench. Unless the Court is satisfied that it is not a misuse, there is no question of looking into the merits of the matter.

2. The learned Counsel for the Applicant states that the affidavit explaining the position will be filed. To enable him to do so, stand over to 9 November 2017. A copy of the Affidavit to be given in advance.”

4. On 9 November 2017, none appeared for the Applicants and the following order was passed.

"None appears for the Applicant. No affidavit pursuant to the order dated 2 November 2017 is filed. If no affidavit in reply is filed within a period of two weeks, it will be presumed that the Applicants have no explanation and the Court may proceed to pass appropriate orders in this Review Application.

2. S.O. to 23 November 2017.”

5. Thereafter, an additional affidavit has been filed by the Applicants, to which a reply is filed by the Respondents. In the affidavit filed on 21 November 2017, it is sought to be pointed out on behalf of the Applicants that though the review was filed on 27 October 2014, the assignment of Second Appeal was with another learned Judge, and it was expected that the review application would come up in its regular course and when the Advocate was preparing other Second Appeal, it was noticed that the present review application was pending. It was urged that there is no intention of not placing the review application before the same learned Judge and there is no attempt to seek rehearing.

6. To the additional affidavit, reply is filed by the Respondents on 24 November 2017. It is contended that Bakre J demitted office on 26 February 2015 and as per the practice, even if the learned Judge is not taking assignment of the same category, the review is placed before the same learned Judge. It is stated that the Applicants did not deliberately remove the office objections inspite of various opportunities and only after Bakre J retired, that the review was registered and there is a clear attempt to abuse the process of law by the Applicants. It is also contended by the Respondents that for last two years various adjournments have been sought before the learned District Judge on the ground that the review is pending.

7. A judgment once rendered is final, however, to avoid genuine mistakes or injustice, power of review is conferred. The Apex Court in *Sow Chandra Kante and another v Sheikh Habib*¹ held:

“A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and over-ruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost.”

8. The Apex Court in *Tamil Nadu Electricity Board and another v N. Raju Reddiar and another*², has held that the review petition is not and should not be an attempt for hearing the matter again on merits. The Apex Court noticed that unfortunately, it has

¹ (1975) 1 SCC 674

² AIR 1997 SC 1005

become, in recent time, a practice to file such review petitions as a routine, that too, with change of counsel and seek rehearing, which is not healthy practice. The learned counsel for the Respondents relied upon a decision of the Apex Court in the case of *Sasi (dead) through legal representatives v Aravindakshan Nair and other*³.

9. If the review is placed before the same learned Judge then attempting rehearing under the garb of review, is a substantially curbed. When the review is placed before another Judge through different counsel, it takes substantial judicial time, which is a concern expressed by the Apex Court. There could however be a genuine reason why the review could not be taken before the same Judge, through the same counsel. However, since this Court has noticed a rising tendency of waiting for the Judge to become unavailable and then trying to re-argue before another Judge, it is necessary that the conduct of each Applicant is scrutinized.

10. The concern of the Court is about the lack of judicial time due to the pendency of the cases, even to give due hearing at the first instance to the litigant. Therefore, an opportunity was given to the Applicants to explain by an additional affidavit. Affidavit filed on behalf of the Applicants explaining this position is not satisfactory. The explanation only states that the Applicants

³ (2017) 4 SCC 692

were waiting to place the review application in due course before Bakre J. The fact that the learned Judge could be demitted the office on 25 February 2015 was not an unknown fact. The learned counsel for the Respondents has drawn my attention to the four orders passed by the Registrar on 12 December 2014, 9 January 2015, 6 February 2015 and 13 February 2015 repeatedly calling upon the Applicants to remove the office objections, which surprisingly seem to have been cleared on 23 March 2015 after the learned Judge demitted office on 26 February 2015. The Apex Court in the case of *Sasi* has held that if the review petition is defective, then it is duty of the counsel to remove such defects at the earliest.

11. As it is noticed from the judgment of the learned Single Judge, the matter was fully argued and by a detailed judgment, it was disposed of. It is informed that till date the First Appeal in the District Judge has not proceeded in view of the pendency of the review. I am of the opinion that this review application, the manner in which it is presented and moved before the another learned Judge by changing the counsel waiting till the same judge was unavailable, is nothing but sheer abuse of process of law and therefore, on this ground alone it deserves to be rejected. The Review Application is accordingly rejected.

N.M. Jamdar, J.