

Anand

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

**CIVIL APPLICATION NO.58 OF 2017
IN
REVIEW PETITION (ST) NO.3515 OF 2017
IN
CIVIL REVISION APPLICATION**

Neguib Yahyabhai Kachwalla .Applicant

Vs.

The Bombay Mercantile Co-operative Bank .Respondents
Ltd. & Ors.

Mr.P.S.Dani, Senior Counsel i/b. Mr.L.C.Tolate, for the Applicant
Mr.M.A.A.Sayed, Advocate, for the Respondent No.1

CORAM : R.G.KETKAR, J.

DATE : 24.03.2017

P.C.

. Heard Mr. Dani, learned counsel for the Applicant and
Mr. Sayed, learned counsel for the Respondent No.1.

2. This is an Application for condonation of delay of 89 days in filing the Review Petition. Respondent No.1, being the only contesting Respondent, notice on Respondents No.2 & 3 is dispensed with. For the reasons stated in the Application, I am satisfied that the Applicant has made out a case for condoning the delay, more so having regard to the shortness of the delay. Hence, Civil Application is allowed

in terms of prayer clause (a) with no order as to costs.

3. At the request of Mr. Dani, Review Petition is taken up for hearing.

4. By this Petition under Section 114 r/w. Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 (For short “CPC”), the Petitioner seeks review of the Order dated 10.10.2016 passed by this Court in C.R.A.No.203 of 2016. By that Order, CRA preferred by the Petitioner challenging the Judgment and Decree dated 25 to 28th August 2003 and the findings dated 18.03.2015 passed/recorded by the learned trial Judge in R.A.E. Suit No.1887/6701 of 1980 as also the Judgment and Decree dated 16.02.2016 passed by the Appellate Bench in Appeal No. 290 of 2004 was dismissed. Aggrieved by that order, Applicant preferred SLP which was dismissed on 02.01.2017 by the Apex Court and Petitioner was given three months time to vacate and handover peaceful possession of the suit property to Respondent No.1 subject to the condition of Petitioner filing an usual undertaking in the Apex Court within a period of four weeks from the date of the order. Mr. Dani upon taking instructions states that in compliance of the Order dated 02.01.2017, Petitioner has filed undertaking in the Apex Court.

5. In support of this Petition, Mr. Dani submitted that the impugned Order suffers from several errors apparent on the face of the record. The pleadings and evidence are in variance and still this Court dismissed C.R.A.. Respondent No.1 contended that it requires suit premises reasonably and bona fide to accommodate auditors for a period of 45 days in year. Petitioner is ready and willing to handover possession of the suit property to the 1st Respondent for a period of 45 days in a year. He submitted that while dismissing CRA, no finding is recorded as regards comparative hardship. He submitted that pending the suit, 1st Respondent offered alternate accommodation. Petitioner is ready and willing to accept alternate accommodation. He, therefore, submitted that the Order dated 10.10.2016 deserves to be reviewed.

6. On the other hand, Mr. Sayed submitted that no case is made out for review of order dated 10.10.2016. Against that order, petitioner approached the Apex Court. On 02.01.2017, Apex Court dismissed SLP and gave three months time to vacate and handover peaceful possession of the suit property to the 1st Respondent subject to giving usual undertaking. Apex Court did not grant liberty to the petitioner herein to seek review of the Order dated 10.10.2016. Having exhausted that remedy, it is not open to the Petitioner to seek review of

the order dated 10.10.2016. Present Petition is abuse of process of Court. He submitted that Petition deserves to be dismissed.

7. I have considered rival submissions advanced by the learned counsel for the parties. I have also perused the material on record. As noted earlier, after hearing both the sides at length, CRA was dismissed on 10.10.2016. Under Order XLVII, review can be sought on the ground that from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by the Applicant at the time when the order was made. The review can also be sought on the ground that on account of some mistake, or error apparent on the face of the record, or for any other sufficient reason. In my opinion, the grounds raised by Mr. Dani do not fall in any of these categories at all. In short, no ground is made out for seeking review of the order dated 10.10.2016. Apart from that, the order under review was challenged before the Apex Court and the Apex Court dismissed the SLP and gave three months time to the petitioner to vacate and handover peaceful possession of the suit property to the 1st Respondent subject to giving usual undertaking. In view thereof, no case is made out for reviewing order dated 10.10.2016.

8. In the case of *Kamlesh Verma Vs. Mayawati*, AIR 2013 SC 3301, the Apex Court has considered the scope of review and has observed thus,

“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 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. The mere possibility of two views on the subject is not a ground for review. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of C.P.C. ”

9. Applying the tests laid down by the Apex Court to the facts of the present case, no case is made out for review of the Order dated 10.10.2016. Hence, Review Petition fails and the same is dismissed. List the Petition “*For Reporting Compliance*” on **07.04.2017**.

(R.G.KETKAR, J.)