

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

REVIEW PETITION NO. 49 OF 2006

IN

WRIT PETITION NO. 750 OF 2006

1. Madhusudan D. Kinlekar
since deceased through his heirs
and representatives:-
 - (a) Smt. Suman Madhusudan Kinlekar
Age: 67 year, Occ: Housewife
 - (b) Dattatray Madhusudan Kinlekar
Age: 35 years, Occ: Business
Both residing at E-336, Garad,
Swantwadi, Ta. Sawantwadi,
District Sindhudurg. ... Petitioners

V/s.

Janardan Ramkrishna Masurkar
Age: 71 years, Occ: Business,
residing at Ubha Bazar, Sawantwadi,
Tal. Sawantwadi, Dist. Sindhudurg. ... Respondent

- Mr. G.H. Keluskar for the Petitioners.
- Mr. A.D. Kango a/w. Mr. B.G. Tangbali for the Respondent.

CORAM : G.S. KULKARNI, J.

DATED : 20th July, 2017.

JUDGEMENT:

1. This is a Review Petition of the year 2006 which has remained pending. The review which is sought is of the order dated 14/02/2006 passed by the learned Single Judge of this Court whereby, Writ Petition of the petitioner-tenant against the concurrent findings of both the Courts

below came to be rejected. The petitioner accordingly suffers a decree dated 07/12/2005 as passed by the trial Court directing eviction from the tenanted premises.

2. The only contention as urged in the Review Petition is that the petitioner in the written statement had asserted that there were two premises which were let out, which were separate and for which the rent was separately paid and therefore, the composite suit was not maintainable. The grievance was that this had missed the attention of the learned trial Court as also the appellate Court and further of also this Court when the Writ Petition came to be dismissed. An averment is made in Para 5 of this petition to contend that, this point was specifically raised in ground 4 of the Writ Petition and was also argued by the advocate for the petitioners on 13/02/2006, however, though it was argued it does not find any consideration in the order. The review of the order dated 14/02/2006 is sought on the following contentions as can be seen in Para 5 and 6 of the petition and as relied by the learned counsel for the petitioner. Para 5 and 6 reads thus:-

“5. Similarly the Appellate Court also did not frame an issue and gave a finding. This point has been specifically raised in ground (o) of the writ petition. This point was also specifically argued by the advocate of the petitioner on 13/02/2006. The Hon'ble Court started dictating the order on the ground that the said point was worth considering. However when the actual order was to be dictated, the Jr. of the advocate for the respondent appeared and stated that his senior was not present since it was a matter for admission, his presence was not required. When the actual order was dictated, the

advocate for the respondent stated that a copy of the petition was not received by him though a Caveat was filed. Actually the caveat was not served upon the petitioner and in absence of the caveat he was not required to be served. However, the advocate of the petitioner gave a copy of the petition then and there, and the matter was kept on the next day.

6. On the next day when the matter was called out Shri M.P. Vashi, who appeared on the previous day, could not attend the court as he was indisposed and his Junior argued. The petition was dismissed. In the order this Hon'ble Court has also not dealt with this point which is an error apparent on the face of the record."

3. Admittedly, this review application is filed about 13 days from the passing of the order by the learned Single Judge dismissing the Writ Petition. It may be noted that immediately on 15/02/2006, in view of the dismissal of the petition on the earlier date (14/02/2006), the petitioner had moved the learned Single Judge making a prayer to stay the order for a period of eight weeks which came to be granted subject to certain conditions. Further there was no assertion at this first possible opportunity to point out the contentions as set out in Para 5 and 6 when such opportunity was available to the petitioner to move the Court immediately on the next day.

4. The assertions as made in Para 5 and 6 also cannot be accepted in the absence of any affidavit of the concerned advocate supporting such averments. If what is urged on behalf of the petitioner is accepted, then the sanctity and solemnity of judicial orders would stand impaired and the orders of the Court would become vulnerable on such pleas. The petitioner cannot seek a re-hearing of the pleas by saying that the

petitioner had not argued all the points or to say that the points were argued and not considered by the Court. In any case, such a case as asserted on behalf of the petitioner would not amount to any error apparent on the face of the order requiring the Court to exercise jurisdiction under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure, 1908 to review the order. If the petitioner considered himself aggrieved by the order dated 14/02/2006, proper course for the petitioner was to challenge the said order.

5. Such a request for review of the order on the grounds as urged by the petitioner cannot be accepted in view of the settled position in law. In ***Haridas Das Vs. Usha Rani Banik and Ors***¹, similar contentions as urged by the petitioner in the present case were the subject matter of consideration. The Supreme Court considering the provisions of Order 47 of the Code of Civil Procedure held that, a re-hearing on the review is permissible only if there is a mistake or error apparent on the face of the record or for any other sufficient reason. It was held that the review would not postulate a re-hearing of the dispute because of the parties have not highlighted all the aspects of the case or could perhaps have argued them more forcefully and or cited binding proceedings to the Court and thereby enjoyed a favourable verdict. It would be profitable to note the observations of their Lordships as made in Para 13 of the decision:

1. *AIR 2006 S.C. 1634*

“13. In order to appreciate the scope of a review, Section 114 of the CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the Court since it merely states that it “may make such order thereon as it thinks fit”. The parameters are prescribed in Order XLVII of the CPC and for the purposes of this lis, permit the defendant to press for a rehearing “on account of some mistake or error apparent on the face of the records or for any other sufficient reason”. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. This is amply evident from the explanation in Rule 1 of the Order XLVII which states that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection. This Court in *M/s. Thungabhadra Industries Ltd. (in all the Appeals) V. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur*, [AIR 1964 SC 1372] held as follows:

“There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by “error apparent”. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

6. In the light of above discussion, I see no merit in the Review Petition, it is accordingly dismissed. Interim orders passed in the Review Petition stands vacated. No costs.

(G.S. KULKARNI, J.)