

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 5 OF 2017
IN
APPEAL FROM ORDER NO.182 OF 2017

Sarina E. Lopez .. Petitioner
vs.
Deepak H. Mirchandani and anr. .. Respondents

WITH
APPEAL FROM ORDER NO.183 OF 2017
WITH
CIVIL APPLICATION NO. 246 OF 2017

Ms Sarina E. Lopez, Petitioner in person.
Mr.R.R. Sharma a/w. Mr. Surya Das for the Respondents-Original
Appellant.

CORAM : M. S. SONAK, J.
DATE : 28 JULY 2017.

P.C. :-

1] Heard Ms Sarina E. Lopez, the review petitioner, who appears in person and Mr. R.R. Sharma, learned counsel for the original appellant in the appeals from order, which have been disposed of on 17th February 2017 and in respect of which, the review has been applied for by the review petitioner.

2] Ms Lopez submits that since the appeals to the extent of protection to wall/enclosures has already been dismissed and since, the wall/enclosures have also been removed, nothing survives in Suit No. 1587 of 2014 instituted by the appellants/plaintiffs and the suit should have been dismissed by this Court whilst disposing of the

appeals from order.

3] Ms Lopez has also submitted that she has come across a document, which is marked as Exhibit-B (page 39 onwards) to the review petition. This document pertains to the construction in-question and the same makes no reference to construction of any garage. She submits that from this, it is quite clear that the garage in – question is an illegal construction. She also submits that there is no occupancy certificate issued in respect of the garage in-question. She also submits that despite due diligence, she could not produce the document at Exhibit-B when the appeals from order was being argued. However, through medium of RTI, she had acquired this document. She submits that this is sufficient ground to exercise review jurisdiction and on the said basis, withdraw the interim protection granted by this Court to the suit garage.

4] Ms Lopez, finally submits that very construction of garage or in any case, its continuance violates the provisions of MOFA. Further, since no occupancy certificate has ever been produced, the occupancy of the garage was not required to be protected. Ms Lopez submits that upon such grounds, the order dated 17th February 2017

is required to be reviewed and the interim protection granted to the garage is liable to be withdrawn/vacated.

5] Mr. R. R. Sharma, learned counsel for the original appellant, has submitted that this is not a case for exercise of review jurisdiction. He submits that under the guise of institution of review petition, the review petitioner is not entitled to re-argue the matter on merits. On these grounds, Mr. Sharma submits that the review petition is liable to be dismissed.

6] I have considered the rival submissions.

7] The first submission is really, not a complaint against the order dated 17th February 2017. However, in the opinion of Ms Lopez, since, the enclosures have been ordered to be demolished and since the enclosures have actually been demolished, nothing remains in Suit No. 1587 of 2014 and therefore, this Court while deciding the appeals from order was required to dismiss itself.

8] It is not possible to accept the submission of Ms Lopez. In the appeals from order, this Court was only concerned with the interim

order made by the Trial Court which was challenged in these proceedings. The direction issued by this Court also applies to the interim stage itself. On basis thereof, it will not be possible to accept Ms Lopez's contention that the suit itself was required to be dismissed.

9] So far as second submission is concerned, there is no disclosure either in the review petition or in the affidavit accompanying the same as regards the precise date upon which the review petitioner obtained the copy of document at Exhibit-B. Without such disclosure, it is not possible to accept the contention that the document at Exhibit-B is some new material which was discovered by the review petitioner after the order dated 17th February 2017 was made and that despite due diligence on her part, the review petitioner was unable to acquire or produce such document earlier. In the absence of such disclosure, it is not possible to entertain this review petition on the basis of document at Exhibit-B.

10] However, since the suit is pending, nothing prevents the review petitioner from applying to learned Trial Court to take on

record the document at Exhibit-B to consider the effect of such document, at the stage of disposal of the suit on merits. In case such an application is made by Ms Lopez, the Trial Court is directed to consider such application in accordance with law and on its own merits. However, no ground has been made out for exercise of review jurisdiction.

11] Insofar as third ground is concerned, Mr. Sharma is right that this is a case of re-arguing the matter, at the stage of exercise of review jurisdiction. This is clearly impermissible. The review petitioner has not demonstrated any error apparent on the face of record.

12] Accordingly, this review petition is dismissed. There shall however, be no order as to costs.

(M. S. SONAK, J.)

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