

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

**REVIEW PETITION NO. 51 OF 2017
IN
WRIT PETITION NO. 2530 OF 2016**

M/s. Craftman Electronic Corp. Pvt. Ltd.
& Anr. ... Petitioner
V/s.
The Municipal Corporation of Gr. Mumbai ...Respondent

Mr. M.P. Vashi, Senior Advocate a/w Mr. A.A. Siddiquie i/b
A.A.Siddiquie & Asso. for the Petitioner.
Dr. Birendra Saraf, a/w S.K. Sonawane and Vinod Mahadik for the
Respondent/MCGM.

**CORAM : K. K. TATED, J.
DATED : 10/03/2017**

P.C.:

. Heard learned Counsel for the parties.

2 The learned Senior counsel for the Review Petitioner tenders across the bar additional grounds for incorporating in the present Review Petition. Same is taken on record. Amendment is allowed. Amendment to be carried out during the course of the day.

3 By this Review Petition, the Review Petitioner is seeking to review the order dated 09.08.2016 passed by this Court in Writ Petition No. 2530 of 2016.

4 Initially the petitioner preferred Special Leave to Appeal (C) No. 28745 of 2016 before the Apex Court challenging the order dated

09.08.2016 passed by this Court. The Apex Court by order dated 07.10.2016 dismissed the Special Leave Petition with liberty to Review Petitioner to occupy the suit premises up to end of March, 2017 subject to filing of undertaking in three weeks. Pursuant to the said order passed by the Apex Court, Review Petitioner filed affidavit of undertaking dated 20.10.2016 before the Apex Court. Paragraph 2 of the said undertaking reads thus:

“2. That in compliance of the order dated 07.10.2016 passed by this Hon'ble Court in the above named Special Leave Petition, I hereby undertake to vacate and handover peaceful and vacant possession of Sethana Hall Compound, Nisbet Road, Mumbai 400 010 to the respondent, the Municipal Corporation of Greater Mumbai on 13.03.2017.”

5 By this Review Petition, the Review Petitioner is seeking to review the order passed by this court on the ground that at the time of deciding the Writ Petition No. 2530 of 2016, this Court has not considered the provision of Section 105(B) of Mumbai Municipal Corporation Act.

6 Before considering the submissions of the learned Senior Counsel for the Review Petitioner, it is to be noted that the Apex Court in the matter of ***Inderchand Jain (Dead) Through Lrs. V/s. Motilal (Dead) Through Lrs.***¹ held that in the application for review lies when i) order suffers from an error apparent on the face of the record and permitting the same would lead to failure of justice, ii) discovery of new and important matter or evidence which despite exercise of due diligence was no within the knowledge of the applicant and could not be produced at the time when the order was made, iii) order has been

1 (2009) 14 Supreme Court Cases 663

passed on account of some mistake, lastly iv)for any other sufficient reason. Paragraphs 8, 9 and 10 of this authority reads thus:

“8. An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In Rajendra Kumar v. Rambai: AIR2003SC2095 , this Court held:

The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.

9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.”

7 Even the Apex Court in the matter of ***Haryana State Industrial Development Corporation Ltd. v/s. Mawasi and Ors.***, ² held that Review Petition maintainable if error apparent on face of record pointed out. Paragraphs 28 and 32 reads thus:

2 (2012) 7 Supreme Court Cases 200

28. *In Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius*, the three-Judge Bench referred to the provisions of the Travancore Code of Civil Procedure, which was similar to Order 47 Rule 1 Code of Civil Procedure and observed:

It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.

It may allow a review on three specified grounds, namely, (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record, and (iii) for any other sufficient reason.

It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, at least analogous to those specified in the rule". See Chhajju Ram v. Neki (D). This conclusion was reiterated by the Judicial Committee in Bisheshwar Pratap Sahi v. Parath Nath : AIR 1934 PC 213 (E) and was adopted by on Federal Court in Hari Shankar Pal v. Anath Nath Mitter : AIR 1949 FC 106 at pp. 110, 111 (F). Learned Counsel appearing in support of this appeal recognises the aforesaid limitations and submits that his case comes within the ground of "mistake or error apparent on the face of the record" or some ground analogous thereto.

32. *In Parsion Devi v. Sumitri Devi* (1997) 8 SCC 715, the Court observed:

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 under Order 47 Rule 1 Code of Civil Procedure.... A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

8 The learned Senior counsel for the Review Petitioner submits that whether the effect of Section 105(B) is retrospective or prospective, is not considered by this Court. He submits that if the effect of the said section is prospective then respondent corporation is not entitled to take possession from the Review Petitioner without following due process of law. He submits as under :

"A. The Review Petitioner states that after the order dated 29/09/2015 and the order dated 07/10/2016 passed by the Supreme Court, the Review Petitioners have come to know very important facts, which go to the root of the matter. The said facts are set out hereinafter.

B. That the said land in question was leased out by the State of Maharashtra to a private party with the structures standing thereon.

C. The said structures were occupied by predecessors of the Review Petitioners and various other occupants. In the year 1960 the tenancy and leasehold rights of said were taken over by the Mumbai Municipal Corporation Act of 1888 does not apply to the said land and all structures standing thereon as in the year 1903, it was a private lease hold land with private structures standing thereon.

D. It is submitted that merely because in the year 1960 the Mumbai Municipal Corporation took over the remaining lease hold rights from a private party, Section 105B of the said Act will not apply to the premises occupied by the Review Petitioners.

E. In this regard, the Review Petitioners rely upon a Supreme Court Judgment reported in (2014)4 SCC page 657.

It is submitted that once Section 105B of the said Act has no application to the premises occupied by the Review Petitioners, the order dated 29/9/15, is required to be reviewed.

F. It is further submitted that Section 105B of the said Act was for the first time introduced in the said Act in the year 1961. It is well settled that a provision of law will have prospective application unless application of newly introduced provision is specifically made applicable with retrospective effect.

G. Once it is held that 105B can only have a prospective effect, the same can apply only to those premises, which were given on rent by Respondent No.1 after the year 1961. As the premises in question were and are occupied by Review Petitioners prior to 1961, the said Section 105B of the said Act will not apply to the said premises.”

9 In support of this contention, the learned Senior counsel for the review petitioner relies on judgment of the Apex Court in the matter of ***Subhash H. Pokhale v/s. Oriental Insurance Company Ltd. and its Estate Officer***³. He relies on paragraphs 44,45,46 and 54, which reads thus:

“44. There is another aspect of the matter. Mr. Raval, learned senior Counsel for the Respondents has contended that the Appellant's submission that he was protected under the Bombay Rent Act, and that protection has been continued under the Maharashtra Rent Control Act, 1999, is not available before the Estate Officer. The question, therefore, comes to our mind as to what happens to the rights of the Appellant made available to him under the State Act at a time when the erstwhile company had not merged in the first Respondent Government Company? Can it be said that he was occupying the premises without the authority for such occupation? Can it be said that with the application of the Public Premises Act to the premises occupied by the Appellant, those rights get extinguished?

45. It has been laid down by this Court time and again that if there are rights created in favour of any person, whether they

3 (2014)4 Supreme Court Cases 657

are property rights or rights arising from a transaction in the nature of a contract, and particularly if they are protected under a statute, and if they are to be taken away by any legislation, that legislation will have to say so specifically by giving it a retrospective effect. This is because prima facie every legislation is prospective (see para 7 of the Constitution Bench judgment in **Janardan Reddy v. The State** reported in (AIR 1951 SC 124). In the instant case, the Appellant was undoubtedly protected as a 'deemed tenant' under Section of the Bombay Rent Act, prior to the merger of the erstwhile insurance company with a Government Company, and he could be removed only by following the procedure available under the Bombay Rent Act. A 'deemed tenant' under the Bombay Rent Act, continued to be protected under the succeeding Act, in view of the definition of a 'tenant' under Section [7\(15\)\(a\)\(ii\)](#) of the Maharashtra Rent Control Act, 1999. Thus, as far as the tenants of the premises which are not covered under the Public Premises Act are concerned, those tenants who were deemed tenants under the Bombay Rent Act continued to have their protection under the Maharashtra Rent Control Act, 1999. Should the coverage of their premises under the Public Premises Act make a difference to the tenants or occupants of such premises, and if so, from which date?

46. It has been laid down by this Court through a number of judgments rendered over the years, that a legislation is not be given a retrospective effect unless specifically provided for, and not beyond the period that is provided therein. Thus, a Constitution Bench held in **Garkiapati Veeraya v. N. Subbiah Choudhry** reported in (AIR 1957 SC 540) that in the absence of anything in the enactment to show that it is to be retrospective, it cannot be so constructed, as to have the effect of altering the law applicable to a claim in litigation at the time when the act was passed. In that matter, the Court was concerned with the issue as to whether the Appellant's right to file an appeal continued to be available to him for filing an appeal to the Andhra Pradesh High Court after it was created from the erstwhile Madras High Court. The Constitution Bench held that the right very much survived, and the vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

54 *Having noted the aforesaid observations, it is very clear that in the facts of the present case, the Appellant's status as a deemed tenant was accepted under the state enactment, and therefore he could not be said to be in "unauthorised occupation". His right granted by the state enactment cannot be destroyed by giving any retrospective application to the provisions of Public Premises Act, since there is no such express provision in the statute, nor is it warranted by any implication. In fact his premises would not come within the ambit of the Public Premises Act, until they belonged to the Respondent No. 1, i.e. until 1.1.1974. The corollary is that if the Respondent No. 1 wanted to evict the Appellant, the remedy was to resort to the procedure available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, by approaching the forum thereunder, and not by resorting to the provisions of the Public Premises Act."*

10 On the basis of these submissions, the learned Senior Counsel for Review Petitioner submits that the judgment passed by this Court on 09.08.2016 in Writ Petition No. 2530 of 2016 is required to be reviewed.

11 Bare reading of prayer made by the petitioner in the present Review Petition, itself shows that petitioner is seeking to re-argue the entire matter on its own merits. Prayer clause (b) of the present Review Petition reads thus:

"b) That this Hon'ble Court be pleased to reconsider the order dated 29.09.2015 passed by Ld.City Civil Court while allowing Appeal No. 30 of 2015 and the same set aside by allowing the Writ Petition No. 2530 of 2016 titled as the Municipal Corporation of Gr. Mumbai v/s. M/s. Craftman Electronic Corp. Pvt. Ltd. & Ors. By recalling the order dated 09.08.2016 passed by His Lordship Mr. Justice Kamal Kishor Tated, in Writ Petition No. 2530 of 2016."

12 It is to be noted that the review petitioner seeking to reargue the entire matter on new grounds which were not taken by them before the Trial Court and/or in Writ Petition. Apart from that the petitioner specifically given undertaking before the Apex Court that they will vacate and handover vacant and peaceful possession to the Respondent Corporation. In spite of that undertaking, petitioner moved before this Court the present review petition. All contentions of Review Petitioner already considered at the time of deciding the Writ Petition. On one or the other ground Review Petitioner wants to delay handing over possession of property to Municipal Corporation.

13 The entire endeavor made by the Review Petitioner to re-argue the Petition. Same is not permissible.

14 Hence, Review Petition stands rejected.

(K.K.TATED, J.)