

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION (L) NO. 19 OF 2016
IN
WRIT PETITION NO. 2585 OF 2013

Mangala Prasad Chaubey } Petitioner
 versus
the Estate Officer-4A, }
M. H. & A. D. Board and Anr. } Respondents

Mr. Mangala Prasad Chaubey – Petitioner
in-person.

Mr. S. P. Thorat for respondent no. 1.

CORAM :- S. C. DHARMADHIKARI &
 G. S. PATEL, JJ.

DATED :- FEBRUARY 24, 2017

P.C. :-

1. The review petitioner seeks review of our order, which was passed in Writ Petition No. 2585 of 2013 on 18th February, 2016.
2. By the order under review, the original petitioner's writ petition was allowed. The original writ petitioner is the second respondent to the review petition.
3. The review petitioner before us is the original respondent no. 2 to the main writ petition. The review petitioner's grievance firstly is that the advocate, who was appointed for him, had no time to consult or discuss the matter with him. In the absence of

detailed discussion with the advocate and when she was not prepared, the matter could not have been properly argued. That is why the advocate failed to convince this court.

4. The second submission is that in the review petition, the petitioner has pointed out the errors apparent on the face of the record. The order under review proceeds on the footing that the occupant Rekha and her husband Harish were lawful allottees and therefore, could have successfully assailed the communication from the Maharashtra Housing and Area Development Authority (MHADA). The position is otherwise and is reflected from annexures 'C', 'E', 'L' and 'M' to the present review petition. The said Rekha and Harish have misrepresented the facts to the authorities and in the absence of the petitioner and behind his back, obtained certain orders and directions. The petitioner being a seaman and his entitlement being protected in terms of the Merchant Shipping Act, 1958 so also whenever a seaman is to be proceeded against in a court of law, it is that law which is applicable, then, such vital facts, as are now pointed out, were not presented before this court at the time of arguing the main matter. Therefore, the order under review should be recalled.

5. Since the review petitioner is appearing in person, we pointed out to him the limits of review jurisdiction. We even offered to him that an advocate can be either engaged by him or can be appointed so that he is not in any manner handicapped. Since the parameters of review jurisdiction are so well settled that we informed him about his right to engage an advocate so that he convinces us on the legal point, particularly on the maintainability of the review petition.

6. The review petitioner appearing in-person stated that he has prepared the review petition. He is aware of the facts and if an opportunity is granted, he would be pressing the same. It is accordingly we have heard him at great length and with his assistance, we have perused the review petition.

7. The review jurisdiction can never be equated with an appeal to a higher court, or the power of revision. In review, we cannot once again consider the very same matters, which are set out in the main petition. If we have omitted from consideration any of the documents or annexures to the main writ petition or misread and misinterpreted them, then, the remedy of this review petitioner was to challenge our order in a higher court. We cannot be called upon to revisit our factual conclusions and by going behind the order under review. That would mean all the

annexures to the review petition being considered all over again, we can arrive at a different conclusion than the one arrived in the order under review. Precisely these are the limits of review jurisdiction and to which we invited his attention. This course is impermissible in review jurisdiction and given the parameters set out in Section 114 read with Order 47 Rule 1 of the Civil Procedure Code, 1908. Hence, the review petition cannot be entertained. It is dismissed.

8. Our judgment and order under review is clear. It not only notices the presence of the review petitioner in the court, but equally the efforts made by his advocate to convince us. With the assistance of all advocates, we had perused the record and passed the order. Paras 11 and 12 of the order under review are clear. We have not prejudiced any of the legal rights and contentions of the petitioner. The petitioner has proceeded against Mrs. Rekha Kumar and Mr. Harish Kumar both, in civil and in criminal court. Our order was limited to the legality and validity of the MHADA's action. That has nothing to do with the prior dispute, which is pending between Rekha, Harish and the petitioner. The rights and contentions of the review petitioner therein are unaffected. Equally, the criminal prosecution remains unaffected by our order. That is how we have clarified the position in para 12.

Hence, there is no prejudice to the review petitioner. All the more, therefore, we are not inclined to entertain this review petition.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)