

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

REVIEW APPLICATION NO.213 OF 2018

Rafique Ahmed Mohd. Osman

Petitioner

VERSUS

Mohd. Ali Yusuf Ali & anr.

Respondents

...

Mr. Taufeeque Ahmed, Advocate holding for Mr. Shaikh Shakil, Advocate
for the petitioner

Mr. N.T. Tribhuwan, Advocate for the respondent No.1

...

CORAM : RAVINDRA V. GHUGE, J.

DATE : 29th OCTOBER, 2018

PER COURT :

1 I have heard the learned Advocate for the review applicant who has drawn my attention to the grounds formulated in the memo of the review application. The writ petition is virtually re-argued. A Good Ground Certificate is issued by Advocate Mr. Shakil U. Shaikh, wherein it is stated that paragraph Nos.1 to 16 of the review application are good grounds for review. I have considered paragraph Nos.1 to 16 of the said application with the assistance of the learned Advocate.

2 While passing the order dated 11.07.2018 which is sought to be reviewed, this Court had recorded the entire submissions of the petitioner in paragraph Nos.3 to 7 which read as under :-

“3 The contention of the petitioner is that RCS No.1131/2001 was earlier decreed in 2002. Thereafter, it was restored under the orders of the Court in 2010. All the proposed amendment paragraphs from 19-A to 19-I pertain to the events that have occurred in between 2001 to 2005. Since the suit was not in existence, there was no scope to introduce any amendment earlier. After the suit was restored to the Trial Court in 2010, that the petitioner got an opportunity of putting forth the proposed amendment.

4 Learned Advocate appearing on behalf of the respondents submits that the petitioner also desires a declaration that the sale deed, executed by one Hussainabee in favour of the original respondent, dated 19.07.2005 is void and not binding upon the petitioner appellant. The said prayer is struck by the law of limitation and even a separate suit cannot be permitted since it would be barred by limitation. It is, therefore, contended that when an independent suit would be barred, the petitioner seeks to raise the said cause of action by way of the proposed amendment.

5 The law on amendment is now settled in the recent judgment of the Hon'ble Apex Court in the matter of Revajeetu Builders and Developers Vs. Narayanaswami and Sons [(2009) 8 M.L.J. 907 (SC)] and Chakreshwari Constructions Pvt. Ltd., Vs. Manohar Lal [2017(5) SCC 212]. Any cause of action, which is otherwise barred by limitation and cannot be entertained through a separate suit, cannot be raised through an amendment in an existing suit on the ground of

avoiding multiplicity of litigation.

6 I find from application Exh.25 vide which the petitioner sought leave to amend the plaint, that though the incidents or events that have occurred in between 2001 to 2007 and the suit having been restored on 19.07.2010, neither has the petitioner moved the amendment application with promptitude, nor does Exh.25 indicate any reason as to why the petitioner has not proposed the amendment earlier. Exhibit 25 is equally silent as to the source of the information since the petitioner claims that he had no knowledge about all the events that are mentioned in the proposed amendment. The circumstances which prevented the petitioner from proposing the amendment are also not set out. A conspicuous silence is maintained on the aspect of due diligence. It is only prayed that since the suit was restored by order dated 19.07.2010, the application moved on 16.11.2016 be allowed.

7 There is no dispute that the parties have to be granted adequate opportunity of putting forth their best evidence. However, neither can a litigant be permitted to introduce a cause of action through an amendment which is otherwise barred by the Law of Limitation even if a fresh suit is to be filed.”

3 Though the learned Advocate for the applicant submits that a fraud was played on the District Court in an earlier proceeding, I am not required to go into the said contention as the proceedings were pending before the Lower Court, when this Court has passed the order.

4 Considering the law laid down by the Hon'ble Apex Court in

Lily Thomas Vs. Union of India, AIR 2000 SC 1650, a review application is not to be entertained as if a writ petition is being argued.

5 When application Exh.25 seeking an amendment was totally silent about the source of information as regards the events that had occurred between 2001 to 2007 and since there was no pleading on due diligence, the impugned order of the Appellate Court rejecting application Exh.25 praying for leave to amend, was sustained by this Court.

6 Considering the above, I find that this review petition is devoid of merits and deserves to be dismissed by imposing costs of Rs.25,000/-.

7 Learned counsel for the petitioner submits that the petitioner is a senior citizen and feels aggrieved. Hence, this review application was filed. It is prayed that costs may not be imposed considering the age and his condition.

8 In view of the above, this review application, being devoid of merits, is rejected.

[RAVINDRA V. GHUGE, J.]

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