

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) 19 OF 2018
IN
WRIT PETITION NO.71 OF 2016

M/s. Suvarn Rajaram Bandekar ... Applicant /
Discretionary Trust, Original
having office at Suvarn Bandekar Petitioner
Building,P.O.Box No.11, Vasco-da-
Gama, Goa. Pin Code 403 802,
represented herein by its Trustee,
Shri Suvarn Bandekar.

versus

- 1 Advocate Sunifer Cardozo,
Resident of House No.107/A,
Ambexir, Sernabatim,
Salcete – Goa.
- 2 Mr. Jovek Cardozo
Resident of House No.107/A,
Ambexir, Sernabatim,
Salcete – Goa.
- 3 M/s. Narayan Rajaram Bandekar
Discretionary Trust,
Office No.601, Dr. Ozler Forum,
Near St.Andrew's Church,
P.O. Box No.31,
Vasco-da-Gama, Goa 403 802.
- 4 Mrs. Maria Leticia Cardozo
- 5 Miss Sweta Cardozo
- 6 Mrs. Audrey Cardozo Fernandes
- 7 Mr. James Sebastiao Fernandes

All residents of House No.107/A,
Ambexir, Sernabatim,
Salcete – Goa.

- 8 Joint Mamlatdar of Salcete at
Margao, Office of the Mamlatdar of
Salcete at Margao,
Mathany Saldanha Administrative
Complex,
Margao, Salcete, Goa.
- 9 Deputy Collector and S.D.O.
Office of the Deputy Collector
S.D.O. Margao,
Mathany Saldanha Administrative
Complex,
Margao, Salcete, Goa.
- 10 Administrative Tribunal of Goa at
Panaji ... Respondent
Dr. Vaidya Building, Panaji, Goa. s

Shri J.E. Coelho Pereira, Senior Advocate with Shri V.
Braganza, Advocate for the petitioner.

Shri Parag Rao, Advocate for the respondent Nos.1 and 2.

CORAM : NUTAN D. SARDESSAI, J.

RESERVED ON : 31st July,2018.

PRONOUNCED ON : 9th August, 2018.

ORDER:

1. The applicant seeks the review of the judgment and
order passed by this Court dated 04/05/2018 under Order

XLVII Rule 1 CPC.

2. It was the applicant's case that there were errors in the said judgment and order which are apparent on the face of the record and also in view of the discovery of the new and important matter of evidence which the applicant discovered from the records of the file of the Regular Civil Suit No.64/1992 and from the records of the office of the Mamlatdar of Salcete, Margao, which was not within the applicant's knowledge and therefore could not be produced before this Court when the said judgment came to be passed. This application therefore was necessitated apart from the correction of the statement of fact attributed to the applicant which requires to be corrected and the judgment and order requires to be reviewed. The applicant made a detailed reference to the observations made by this Court at various paragraphs viz a viz the submissions of Shri P.S. Rao, learned Advocate for the respondents and the findings at paragraphs 10, 15, 16, 22 and 24.

3. The applicant had come across a letter dated

15/04/2002 addressed by the IIIrd Additional Civil Judge, Senior Division, Margao to the Mamlatdar pursuant to which the learned Judge had written to the Mamlatdar informing that he was forwarding a copy of the plaint, written statement and issues passed in the Civil Suit No.64/1992. The learned IIIrd Additional Civil Senior Judge had also requested the Mamlatdar to decide the issue of the mundkarship expeditiously. Thereafter the said judge had vide the letter dated 18/10/2004 had issued a reminder to the office of the Mamlatdar to decide the issue expeditiously. The inward register of the office of the Mamlatdar disclosed the fact that the said office was in receipt of the letter dated 18/10/2004. The second reminder was sent by the IIIrd Additional Senior Civil Judge dated 30/10/2006 and a record to that effect was made in the Roznama of that date requesting the Mamlatdar to decide the issue expeditiously. The learned IIIrd Additional Senior Civil Judge by the letter dated 11/09/2008 had requested the Mamlatdar to submit the status report of the mundkar issue at the earliest and to proceed with the matter.

4. It was the case of the applicant that on inspection of the files and the register of the Mamlatdar, the applicant found facts which were in fact not in its knowledge till its Advocate inspected the file of the IIIrd Additional Senior Civil Judge and found the documents on 25/04/2018. The findings in fact rendered by this Court in the context of the reference of the issues in the suit in paragraphs No.9, 10, 14, 15, 16, 22 and 24 are in fact to be reviewed in that context. Without prejudice the judgment and order dated 04/05/2018 called for a review inasmuch as this Court after taking cognizance of the fact that the pleadings in both the suits were before the Mamlatdar had been pleased not to advert to the judgment of the Hon'ble Supreme Court in the case of M. Subbarao Vs P.V.K. Krishna Rao [AIR 1989 SC 2187], with respect by overlooking the fact that the original applicant Armando had led and concluded leading evidence during which a plan showing the structures covered by the Civil Suit No.64/1992 and also Civil Suit No.153/1992 had been produced before the Mamlatdar thereby submitting himself to the jurisdiction and adjudication under Section 8A of the

Mundkar Act.

5. The findings rendered by this Court in the judgment and order date 04/05/2018 therefore suffered from errors apparent on the face of record. Besides, it was the case of the applicant that there was no proper reading and construction of the Mamlatdar Court's Rules. This Court erred in upholding the findings of the Deputy Collector and of the Tribunal and hence a review of the judgment was necessary on such and similar grounds. The application had therefore to be allowed and the judgment and order passed by this Court had to be reviewed as it suffered from the errors apparent on the face of the records. It was supported by the judgment under review and the documents purportedly obtained from the Court of the Senior Civil Judge.

6. The respondent Nos.1 and 2 opposed the application and pressed for its dismissal in limine on the ground that it did not suffer from any errors apparent on the face of the record. The new and important matter referred to by the

applicant was not at all new, inasmuch as the same was in existence even prior to the decision of the Mamlatdar on 21/12/2012. In any case, the applicant with the exercise of due diligence could have placed the same material before the learned Mamlatdar or before the Deputy Collector in appeal or before the Administrative Tribunal in revision or even before this Court in the petition prior to the judgment and order in review. The present application in the guise of a review is an attempt of reopening the entire matter which has been concluded by a well reasoned order. The applicant was seeking a rehearing on issues of evidence as well as on issues of interpretation of the provisions of law when the only remedy for the applicant was to file an appeal against the judgment.

7. The application did not disclose any error apparent on the face of the record and was rather in the nature of inviting this Court to re-appreciate the evidence and to re-interpret the provisions of law, on which a final conclusion had been rendered by this Hon'ble Court. Though the applicant sought to rely upon certain documents to establish that the issue in

the Special Civil Suit No.64/1992/III was referred to the Mamlatdar and not only the issue in the Special Civil Suit No.153/1992, this contention of the applicant was against the very record of the Joint Mamlatdar. In fact the Joint Mamlatdar in view of the dispute between the parties as to whether issue in both the suits were referred or only the issue in Special Civil Suit No.153/1992 was referred, perused the entire record of the case and categorically rendered a finding that only the issue in the Special Civil Suit No.153/1992 was referred by the Civil Court which position was confirmed from the records by the Deputy Collector in the appeals filed by the respondents, against the judgment and order of the Joint Mamlatdar dated 21/2/2012. It was therefore impermissible for the applicant to contend that the issue in the Special Civil Suit No.64/1992/III was also referred to the Mamlatdar by the Civil Court by relying upon certain letters and Roznama entries.

8. These letters and the Roznama referred to by the applicant did not establish conclusively that the issue in the Special Civil Suit No.64/1992/III was in fact referred to the

Mamlatdar and that the Mamlatdar was in receipt of such a reference and upon receipt of such a reference had registered a separate case and issued notice to the parties for adjudication of such a reference. The records of the case No.JM-III/Mund/Issue/3/1996 did not bear any reference to the receipt of any issue from the Civil Court in the Special Civil Suit No.64/92/III. The respondents had received the notice dated 25/01/1996 from the Mamlatdar only in the case No.JM-III/Mund/Issue/3/1996 as regards the issue referred by the Civil Court in the Special Civil Suit No.153/1992. No such notice was received in respect of the issue in the Special Civil Suit No.64/1992/III. In any event, the documents on which the applicant was seeking to rely were not new and were available even before the judgment of the Joint Mamlatdar was passed on 21/12/2012 and could not be looked into for the purpose of entertaining a review petition inasmuch as a review was permissible only if the document was new and not in respect of an old document. In any case, the applicant was always on notice that the Mamlatdar had categorically observed that the only issue in

the Special Civil Suit No.153/1992 was referred for adjudication and not any issue in the Special Civil Suit No.64/1992/III. In the circumstances, therefore in case the applicant had exercised basic diligence, he would have procured the very documents which were sought to be placed on record by way of review.

9. The applicant could have relied upon these documents at the time of filing the revision petition before the Tribunal. The applicants could also have placed these documents on the record of the Court at the time of filing the petition and at the time of hearing thereof. The applicant had failed to exhibit even basic diligence and in fact the conduct of the applicant to obtain the letters and Roznama entries disclosed complete negligence and desperation. The findings rendered by this Court that the issue in the Special Civil Suit No.153/1992 was referred to the Mamlatdar for adjudication was in consonance with the finding of the Mamlatdar himself. No case whatsoever was made out for a review of the judgment and no review of the findings in paragraph 14 were called for. The applicant was making an attempt to re-argue

the matter and calling upon this Court once again to reinterpret the provisions of law which had been already interpreted and findings rendered by this Court. Even assuming that there was an erroneous interpretation the only remedy to the applicant was to have the same corrected in appeal and not by way of review. This Court while exercising the jurisdiction under Article 227 of the Constitution of India did not find any perversity in the judgment of the Administrative Tribunal. No case whatsoever was made out for a review of the judgment on such and similar grounds taken in the reply and therefore the application had to be dismissed with exemplary costs.

10. Heard Shri J. E. Coelho Pereira, learned Senior Advocate on behalf of the applicant who submitted that he was well aware of the restraint in a matter of review and that it was not an appeal in disguise. A review was permissible where there was an error apparent on the face of record, there was a discovery of new and material documents and on the premise that the order of the Court could do no harm to the party. He read through the contents of his application

and submitted that an application was made on behalf of the respondents under Order XIV Rule 5 CPC dated 27/06/1999 and an order was passed by the learned Senior Civil Judge dated 29/06/1999 ordering the issue of mundkarship to be referred to the Mamlatdar for its decision. The said issue was received in the Office of the Mamlatdar as per the extracts of the inward register produced on record. Thereafter, the learned Senior Civil Judge had forwarded the copy of the issue dated 29/06/1999 in the Special Civil Suit No. 64/1992 to the Mamlatdar for its expeditious decision and to submit the decision on or before 10/06/2002. The IIIrd Additional Senior Civil Judge had sent a reminder to the office of the Mamlatdar dated 30/10/2006 which was duly received in the office vide the inward entry dated 01/11/2006 followed by another letter to the office of the Mamlatdar dated 11/09/2008 being the third reminder calling for a report from the Office of the Mamlatdar in the matter of the decision on the issue referred to in the Special Civil Suit No.64 of 1992 followed by another reminder letter dated 21/09/2010 to the Office of the Mamlatdar calling for

the status report.

11. It was the contention of Shri J.E. Coelho Pereira, learned Senior Advocate that the findings rendered by this Court in the Judgment under review would not have been recorded if these documents were before this Court, therefore it was a fit case for the review of the order. The Mamlatdar had decided the issue in both the suits and it was not as if the issue in the Special Civil Suit No.153/1992 alone was decided by the Mamlatdar. He next referred to the order of a learned Single Judge of this Court (S. Radhakrishna,J.) dated 22/08/2001 where the learned Judge did not find any illegality or error apparent on the face of the record in the order passed by the Deputy Collector directing the Mamlatdar to proceed with the enquiry under Section 8A of the Act and once again referred to the requirements of Section 8A and 32 of the Mundkar Act. It was his contention that the relevant Rules under the Mundkar Act were not properly construed by this Court and in that context referred to the English dictionary meaning on “applicant” and “opponent” to buttress his plea. The order under review had

to be reviewed. He placed reliance in **Chairman and Managing Director Central Bank of India & ors v/s. Central Bank of India SC/ST Employees Welfare Association & Ors.** [AIR 2016 SC 326] and **Board of Control for Cricket, India and Anr. v/s. Netaji Cricket Club and others** [(2005) 4 SCC 741] and once again pressed for a review of the order passed by this Court.

12. Shri P.S. Rao, learned Advocate for the respondents submitted that this Court had amply dealt with the interpretation on Rule 14, Section 32, 8A and the Section 27 of the Mundkar Act and therefore there was no scope for further considering the same in the present application. It was his contention that the order passed by this Court was a well reasoned order and the only remedy available to the applicant was by way of appeal in the Supreme Court and not a review and in that context made a pertinent reference to the relevant paragraphs of the judgment. In the matter of reference of issue, he submitted that the documents which were now sought to be produced were a part of the Court records. There was no due diligence exercised by the

applicants when the matter came to be heard over several sessions. No grievance too was made before the Deputy Collector, Tribunal or this Court that the issue was referred in both the suits. No register was produced in respect of the reference to the issue in the Special Civil Suit No.64/1992.

13. The order dated 25/02/2011 in the Writ Petition No.102/2011 filed at the instance of the applicant did not make any reference to the issue in the Special Civil Suit No.64/1992 accepting for a moment the plea on behalf of the applicant that the issue was referred to the Mamlatdar as early as 2002. This is apart from the fact that no notice was issued to the respondent in respect of such an issue in the earlier Special Civil Suit No.64/1992. The Mamlatdar in his judgment too had made specific reference to one issue. Although the applicant was now seeking to produce the application dated 27/06/1999 pursuant to which the issue of mundkarship came to be framed by the learned Senior Civil Judge, nonetheless, even considering these records, the issue came to be referred to the Mamlatdar in 2002. Assuming without admitting that such an issue was referred,

there was no material on record to show that the Mamlatdar took cognizance thereof and issued notice to the respondents. Although Shri J.E. Coelho Pereira, learned Senior Advocate placed reliance in the inward entry in the reminder letter, there was no track that such an issue was referred before any particular Mamlatdar much less of any notice being issued to the respondents and therefore there is no basis in the case on behalf of the applicant that the issue in the previous Special Civil Suit No.64/1992 had also been referred for determination.

14. It was the contention of Shri P.S. Rao, learned Advocate for the respondents that the Mamlatdar had passed the order in 2012 wherein it was categorically held that the issue was not referred in the Special Civil Suit No.64/1992 for determination despite which no grievance was made on behalf of the applicant before the Deputy Collector. There was no new and important document being produced on behalf of the applicants as to attract the predicates of Order XLVII Rule 1 CPC. Even otherwise accepting the documents at face value, there was no clinching material to establish

that such an issue had been referred to the Mamlatdar for adjudication. He next adverted to the inward register sought to be relied upon on behalf of the applicant at annexure 'C' pertaining to the year 2004 and submitted that there was no indication from the said record that the issue had been referred to any particular Court of the Mamlatdar. This is besides the fact that there was no stamp of the office of the Mamlatdar on the letter dated 15/04/2002 referring the issue in the Special Civil Suit No.64/1992 unlike the letter dated 30/10/2006 which bore the inward date as 01/11/2006. Such endorsement of the entry in the office of the Mamlatdar was also missing in the reminder letters dated 09/11/2008 and 21/09/2008 produced on record and therefore there was no basis to hold that the issue had reached to the office of the Mamlatdar.

15. Shri P.S. Rao, learned Advocate for the respondents further contended that the respondents was issued the notice from the office of the Mamlatdar on the reference of the issue in the Special Civil Suit No.153/1992 dated 08/01/1996 but such a notice was not issued in respect of

the reference of the issue in the Special Civil Suit No. 64/1992. There was no scope for enlarging the scope of the review and hence the application had to be dismissed. He placed reliance in the judgment rendered by this Court in **M/s. Shirka Constrictions v/s. M/s. Appollo Engineers & Contractors Pvt. Ltd.** [Civil application (Review) No. 10 of 2018] and **Haryana State Industrial Development Corporation Limited v/s. Mawasi & Ors** [AIR 2012 SC 3874] and submitted that the judgment in **Gulabi Sangtu Devidas and others v/s. Prema Govinda Gauncar and others** [1993 SCC OnLine Bom 308] was not at all applicable to the case at hand. The review application had therefore to be dismissed with the exemplary costs.

16. Shri J.E. Coelho Pereira, learned Senior Advocate in reply invited attention to the compilation earlier produced in the Writ Petition No.71 of 2016 and adverted to the Roznama dated 14/02/2001 where a clear statement was made before the Trial Court in the proceedings of the Special Civil Suit No.64/1992 that the issue was pending before the Mamlatdar. The respondents had produced the proceedings

in the Special Civil Suit No.64/1992 including the plan which made a reference to all the structures in both the suits. He placed reliance in **State of Maharashtra v/s. Ramdas Shrinivas Nayak and another** [AIR 1982 SC 1249] and that in **D.P. Chadha v/s. Shri Triyugi Narain Mishra and others** [(2001) 2 SCC 221] and once again reiterated that the order of the Court could do no harm to the parties and it was the fit case to review the order passed by this Court and moreover as the applicant could not be relegated to the proceedings before the Mamalatdar after almost two decades.

17. Order XLVII Rule 1 C.P.C. contemplates the situation in which an application for review may lie of a judgment and reads as below :

“1. Application for review of judgment

- (1) Any person considering himself aggrieved,-
 - (a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred,
 - (b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

Therefore on a bare reading of the said provision it would be apparent that a person considering himself aggrieved and on discovery of **new and important matter or evidence which after the exercise of due diligence** was not within his knowledge may apply for a review of the judgment to the Court which passed the decree or made the order.

18. On the submission of Shri J.E. Coelho Pereira, learned Senior Counsel, these documents which he is seeking to rely upon alongwith the application for review was a part of the

Court's records to which he was a party and therefore had ample opportunity to produce them at the different stages of the proceedings i.e. before the Mamlatdar, the Deputy Collector, the Administrative Tribunal and even before this Court. Therefore, it was not a case of the discovery of new and important matter or evidence as to permit the review of the order under review. At all stages of the proceedings before the different authorities, the applicant did not at all show any diligence much less due diligence to pursue the aspect of the issue in a related suit being referred to the Mamlatdar initially for his adjudication. The issue which was referred to the Mamlatdat for adjudication was in the Special Civil Suit No.153/1992 and of which the Mamlatdar took cognizance as a reference No.3 of 1996. Accepting that the issue of mundkarship was framed in the Special Civil Suit No.64 of 1992 as late as 1999, a reference thereof to the office of the Mamlatdar was purportedly made for the first time in 2002. It is another matter that from 2002 till the reference of the other issue came to be decided by the Mamlatdar as late as 2012, the applicant did not show any

diligence to pursue this issue before the Mamlatdar.

19. Though a reference was made to the reminder letters issued to the office of the Mamlatdar and one of them showing an inward entry of 01/11/2006, one fails to understand where exactly the issue had landed when admittedly no contemporaneous record was produced on record by the applicant to show that the notices were issued to the respondents on this issue in the Special Civil Suit No. 64/1992 as were issued to them in the Reference No.3/1996 on the issue referred from the Special Civil Suit No. 153/1992. Therefore as rightly submitted by Shri P.S. Rao, learned Advocate for the respondents the documents sought to be produced and relied upon were neither new and important nor had the applicant shown any diligence at any stage of the proceedings to produce the same or draw the attention of the concerned Courts at the relevant time to pursue the issue of mundkarship arising in the Special Civil Suit No. 64/1992. Moreover, the Roznama to which Shri J.E. Coelho Pereira, learned Senior Advocate has made a reference in the compilation of the disposed petition No.

71/16, it would be relevant to observe that the submissions on behalf of the Advocate that the matter was pending before the Mamlatdar for decision could never have related to the issue in the Special Civil Suit No.64/1992 when the issue was referred by the Senior Civil Judge for the first time by his letter dated 15/04/2002. Therefore, to all intents and purposes the Advocate appearing in the said suit was probably referring to the issue between the same parties referred in the Special Civil Suit No.153/1992 and it could never have related to the issue in the Special Civil Suit No.64/1992.

20. Coming to the aspect of the non-consideration of the relevant provisions of Mundkar Act and the Rules framed thereunder particularly Rule 14, a cursory perusal of the judgment under review would reveal that there was due consideration of all these relevant provisions in the judgment under review and therefore a re-look into the interpretation of these provisions would not be permissible in review howsoever unpalatable it may be to the applicant's case. Therefore the discussion on the Oxford dictionary meaning of

the expression 'applicant' and 'opponent' need not detain me further looking at the reference, any which way. In *M/s. Shirka Constrictions (supra)*, due reference was made to the judgment of the Hon'ble Apex Court in **Haryana State Industrial Development Corporation Limited** (*supra*) which in turn considered the Three Judge Bench in **Thungabhadra Industries Ltd. V/s. Govt. of A.P.** [AIR 1964 SC 1372] and that in **Meera Bhanja v/s. Nirmala Kumari Choudhary** [(1995) 1 SCC 170] and ultimately held that the party seeking review had failed to show the error apparent on the face of the record or that despite the exercise of due diligence there was discovery of new and important matters of evidence which was not within his knowledge or could not be produced at the time when the decree or order was made or an account of such mistake or error apparent on the face of the record or other sufficient reason and the application dismissed.

21. In **Board of Control for Cricket, India** (*supra*), the Hon'ble Apex Court was of the opinion that the jurisdiction of the High Court in entertaining the review application could

not said to be ex facie bad in law when Section 114 of the Code empowers a Court to review its order if the conditions precedent laid down therein were satisfied. The substantive provision of law did not prescribe any limitation on the power of the Court except those which were expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit. It was further observed that a mistake on the part of the Court which would include a mistake in the nature of an undertaking may also call for a review of the order and an application for review would also be maintainable if there exists sufficient reasons therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. It referred to the judgment in **Moran Mar Basselios Catholicos and another v/s. The Most Rev Mar Poulouse Athanasius and others** [(1955)1 SCR 520] where the Apex Court had made observations regarding the limitations in the application of review of its order stating:

"Before going into the merits of the case it is as well to bear in mind the scope of the application for

review which has given rise to the present appeal. It is needless to emphasis 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 XLVII, 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.", but the said rule is not universal."

There can be no dispute with the proposition laid down in the **Board of Control for Cricket** (supra), but the applicant has not been able to show from the material on record that there is material to review the judgment in the

case.

22. In **State of Maharashtra** (supra), the two Judge bench of the Hon'ble Apex Court held at paragraph 7 that the Judges' record is conclusive and that neither lawyer nor a litigant may claim to contradict it, except before the Judge himself, but nowhere else. There can be no dispute with these observation of the Hon'ble Apex Court but the applicant has not been able to show how it applies in the facts of the present case. Rather it is counter-productive to the case of the applicant who had failed to move the concerned authorities at every stage and to bring to their notice about the reference of the issue and/or its non-consideration. The judgment would therefore not substantiate the case of the applicant for a review of the order.

23. Therefore, on an over all consideration of the matter, there is no merit in the application for review which fails to meet the predicates of Order XLVII Rule 1 CPC and in view thereof, the application found lacking in merits is dismissed

with no order as to costs.

NUTAN D. SARDESSAI J.

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