

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) 23 OF 2017
IN
SECOND APPEAL NO. 92 OF 2016

M/s. P.V. Enterprises,
A proprietorship concern of
Mr. Philip Benedict Vaz
having their address at Shop No.
10, Santa Cruz Apartments,
Porba Vado,
Calangute, Bardez, Goa,

Appellant/
Applicant

versus

1 Mr. John Antonio Timotio
Ligorio Da Piedade Menezes,
Alias Mr. John Menezes,
Major, landlord, r/o.7,
Esperanca, S. Bhagat Singh Road,
Panaji – Goa.

2 Village Panchayat of Ucassaim,
Paliem Punola, through their
Sarpanch / Secretary having
Address at Ucassiam, Goa.

Respondents

Shri S.S. Kantak, Senior Advocate with Shri V. Naik, Advocate for
the applicants.

Shri Sudin Usgaonkar, Senior Advocate with Ms. Tanvi Ghanekar,
Advocate for the respondents.

CORAM : Nutan D. Sardessai, J.

RESERVED ON : 27th February, 2017.
PRONOUNCED ON : 8th March, 2018.

ORDER:

1. The applicants seek review of the order dated 07/07/2017 passed by the learned Single Judge of this Court in the Second Appeal No.92 of 2017 pursuant to which the Second Appeal came to be dismissed. The Second Appeal had come to be argued somewhere in October, 2016 and no order was passed for a very long period of time and it was finally disposed off by the order dated 07/07/2017 almost nine months later after hearing the final arguments. The submissions advanced on behalf of the applicants by the learned Senior Counsel had not been considered nor recorded and in addition the judgments cited by the applicants had not been referred to in the order. There was an error apparent on the face of the judgment which would cause manifest injustice to the parties and therefore the review. The impugned order suffered from an error apparent on the face of the record. The impugned order was passed after a period of nine months after hearing the arguments which was impermissible and vitiated the judgment, as the application of mind to the facts was restricted. The impugned order did not refer to, nor considered the judgments cited by the applicants more particularly in **Sahara India Commercial Corporation Ltd. V/s. B. Jee Jee Bhoy Vakharia & Associates & others** (2007 Vol. IV BCR 65), and

Gammon India Lts v/s. Special Chief Secretary [(2006) 3 SCC 364] amongst others. The impugned order did not consider the arguments on their behalf that the Agreement being for a period of five years, its premature termination within 36 months could not be held to be permissible. The order was therefore liable to be reviewed on such and the similar grounds taken in the application and the appeal was required to be reheard.

2. Heard Shri S.S. Kantak, learned Senior Counsel on behalf of the applicants who contended at the outset that the order was delivered almost nine months after the final arguments were heard. It did not refer to nor considered the judgements cited by the applicants. The impugned order did not consider their arguments with respect to the cancellation of an irrevocable Power of Attorney. He adverted to the impugned order particularly at paragraphs No.6, 7 and 8 and contended that although the learned Judge had held at paragraph No.6 that the concurrent findings of fact rendered by the Court below could not be faulted with, nonetheless, the learned Judge had lost track of the fact that the Agreement could not have been terminated within the validity period of five years and when there were still 24 months for the applicants to comply with the terms thereof. It was never the case of the applicants that specific performance was involved and

yet the learned Judge recorded so at paragraphs No.7 and 8 of the order. He placed reliance in **Bright Outdoor Media Pvt. Ltd. V/s. The Union of India** [2015 SCC OnLine Bom 4001] where the Apex Court had clearly held that an undue delay between the conclusion of the arguments and delivery of the judgment shakes the confidence of the people in the judicial system and affects the rights of the parties. Reliance was also placed on *Allen E. Valles v/s. The Recovery Sales Officer* [Writ Petition No. 883 of 2015] where the learned Single Judge of this Court had considered the contention in the matter of delay of more than 10 months in passing the impugned order after the matter was heard making the order liable to be vitiated. It was his contention further that the ground raised by him was not considered in the Second Appeal nor was any reference made to Section 25 of the Indian Contract Act. It was not the case of the respondents that the agreement was without consideration or one sided. There was also no finding rendered by the learned Single Judge that the termination was valid. Since there were errors apparent on the face of records, the application had to be allowed and a fresh hearing of the appeal had to be permitted.

3. Shri Usgaonkar, learned Senior Advocate for the respondents submitted that no suit for specific enforcement of the contract was

filed by the applicants and therefore they could not seek the remedy of specific performance. The judgment of the District Court was confirmed by the learned Single Judge who took a view in the matter which was not liable for interference. It was only cases of patent error apparent on the face of the record that a reversal was permitted in an application for review. It was his contention further that all judgments referred to on behalf of the applicants were duly considered by the learned Single Judge and non-citing judgments was not bad in law. There was also no prejudice to the applicants merely because the order was delayed. It was his contention further that review was not an appeal in disguise. He placed reliance in **Ramesh Sukdow Bhandari v/s. Gangadhar Morto Naik Gaonkar and others** [Civil Review Application No. 19 of 2016] rendered by this Court where a reference was made to the judgments of the **Apex Court in Ms. Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh** [AIR 1964 SC 1372], **Smt. Meera Bhanja Vs. Smt. Nirmala Kumar Chouhury** [AIR 1995 SC 455] and **Kamlesh Verma Vs. Mayawati and others** [(2013) 8 SCC 320]. The learned Single Judge had taken a view that there was no reason to find fault with the concurrent findings of facts rendered by the Courts below and besides it had taken a definite view on the case set out by the parties in paragraphs 7 and 8. Hence,

there was no scope for review and besides there was no prejudice caused to the applicants. The application had to be dismissed.

4. i would consider their submissions in the light of the judgments, the requirements of Order XLVII Rule 1 CPC and the order under review and decide appropriately.

5. Admittedly, there was no dispute that the arguments in this case were concluded before the learned Single Judge in October 2016 and the order was passed almost nine months later in July 2017. In that context, it would be pertinent to refer to the judgment in **Bright Outdoor Media Pvt. Ltd.** (supra), where a personal hearing was given to the petitioner on **27/09/2012** while the impugned order come to be passed on **28/02/2014**. In that context, the Apex Court held that an undue delay between the conclusion of the arguments and the delivery of the judgment shakes the confidence of the people in the judicial system and affects the right of the parties. Reference was also made to the judgment in **Anil Rai v/s. State of Bihar** [2001 (7) SCC 318] where guidelines were issued so that the delay in delivery of judgment after the matter is concluded is prevented. **Allen Valles** (supra), challenged the order of the Recovery Officer, Central Registrar of Co-operative Societies dated 30/09/2015 by which the objection raised by him to the execution of the Award

was rejected. In this case there was a delay of more than 10 months in passing the impugned order after the matter was heard and where it was contended that the impugned order stood vitiated relying on the judgments of the Apex court in **R. C. Sharma vs. Union of India** [1976 (3) SCC 474], Anil Rai (supra), and the judgment of this Court in Pradeep K. R. Sangodkar vs. State of Goa & anr. [CDJ 2006 BHC 2128] in which certain directions were given to pronounce the judgments/orders within a period of three months from the date of conclusion of the arguments.

6. In **Allen Vales** (supra), the learned Single Judge considered the said judgments, observed that there was a certain amount of delay in passing the impugned order but nonetheless held that the judgments of the Apex Court did not lay down a proposition of law that on account of such delay, the order stood vitiated. The learned Judge had observed further that the petitioner would have to demonstrate that a certain ground which was raised was not considered or was left out of consideration on account of the delay and the possible lapse in the memory after the matter was heard. In the factual matrix, the learned judge found that considering the contentions raised before it that it was not a case to send the matter back on the ground of delay in passing the impugned

judgment and did not interfere with the impugned order.

7. Without going into the merits of the order under challenge, a cursory perusal thereof would indicate that the respondents had taken a plea that the applicants had misrepresented the fact and made the respondent no.1 to signed the agreement, issued an irrevocable Power of Attorney and that the terms and conditions were not explained to the respondent no.1. Further that he was made to sign the Agreement by undue influence when he had no intention either to execute the Power of Attorney or to sign the Agreement in favour of the applicant. On a reading of paragraph 6 it is apparent that the learned Single Judge has no doubt held that the Courts below were right in their findings on fact and that there was no reason to find fault with such concurrent findings. However, it is equally a matter of record that the learned Single Judge had not made any reference to Section 25 of the Contract Act qua the explanation where a plea to that effect was raised on behalf of the respondents and recorded in the opening paragraph of the order under review.

8. At the same time, the learned Single Judge had prima facie failed to consider that when the agreement stood terminated and that both Courts below were justified in holding that the respondent no.1 was justified in terminating the agreement, there

was no basis for the learned Judge to hold that the applicants had not sought the relief for specific performance when on his own showing, the Agreement was terminated before its duration could end. The learned Single Judge had proceeded at a tangent to record that the applicants had failed to seek the further reliefs for specific performance having recorded a finding that the Courts below had rightly held that the respondent No.1 was justified in terminating the Agreement and that the applicants by no stretch could ask for specific performance of an Agreement which stood terminated. In any view of the matter, the judgments relied upon by the learned Senior Counsel on behalf of the applicants were also not referred to by the learned Single Judge and therefore it is apparent from the face of the record that the learned Judge missed out the vital aspect of the case set out by the applicants while dealing with the judgment under review.

9. In **M/s.Thungabhadra Industries** (supra), the Hon'ble Apex Court brought about a distinction from a mere erroneous decision to an error apparent on the face of the record and observed that this distinction was real, though it might not always be capable of exposition between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby

an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate arguments one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

10. In **Meera Bhanja** (supra), the Hon'ble Apex Court held that the approach of the Division Bench dealing with the review proceedings clearly showed that it had overstepped its jurisdiction under Order XLVII, Rule 1 CPC by merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error or error apparent in view of the settled legal position. An error apparent on the face of the record means an error which strikes one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. In view of the settled legal position, their Lordships quoted the observations in **Satyanarayan Laxminarayan Hegde Vs. Mallikarjun Bhavanappa Tirumale** [AIR 1960 SC 137] where it was observed that "an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error

apparent on the face of the record. Where an alleged error is far from self evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ”.

11. In **Kamlesh Verma** (supra), Their Lordships of the Apex Court considered the propositions culled out in *Thungabhadra Industries* and *Meera Bhanja* (supra) and held that under Order XLVII Rule 1 CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. 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 powers of review under Order XLVII Rule 1 CPC. In exercise of such jurisdiction, it is not permissible for an erroneous decision to be ‘reheard and corrected’. A review petition, it must be remembered has a limited purpose and cannot be allowed to be ‘an appeal in disguise’. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for the correction of a mistake but not to substitute a view. The mere

possibility of two views on the subject is not a ground for review.

12. The impugned order thus reveals an error apparent on the face of the record which apparently has cropped in on account of the long duration of time from the conclusion of the arguments in October, 2016 to the pronouncement of the order in July, 2017, almost nine months later. The order therefore calls for a review and hence the application is allowed and parties are put to notice that the appeal shall be heard afresh.

NUTAN D. SARDESSAI, J.