

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 8 OF 2018

IN

WRIT PETITION NO. 1148 OF 2016

1. Abdul Razaq (since deceased)
through Legal representatives
(all major)

- (i) Sayeeda Abdul Razaq,
- (ii) Mohammed Arif
- (iii) Amira Abdul Razaq
- (iv) Farha Abdul Razaq
- (v) Matheen I. Sait.
- (vi) Sadia Abdul Razaq
- (vii) Ajaz Ahmed

All with address at “Mubarak Manzil”
Opposite the Electricity Department
Staff Quarters, Aquem,
Margao – Goa.

.... Applicants

V e r s u s

1. Manguesh Rajaram Wagle.

- 2. Anandibai Rajaram Wagle (since deceased
Through her legal representatives) all major
 - 2a. Manguesh Rajaram Wagle, son
 - 2b. Smita Manguesh Wagle, daughter in law
Both residing near Mahalaxmi temple,
Dada Vaidya Road, Panaji-Goa.
 - 2c. Suman Anand Naik Kurade, daughter,
 - 2d. Dr. Anand G. Naik Kurade, son in law
Both r/o Near Sangam Sagar,
B-168, East of Kailash, New Delhi 110065.

- 2e. Sharad Suresh Shirwaikar, daughter,
- 2f. Suresh W. Shirwaikar, son in law
Both r/o Shraddha, Aquem, Alto,
Margao Goa.

- 2g. Dr. Sheela G. Laud, daughter,
Daughter and her husband, son in law
- 2h. Dr. Gajanan W. Laud,
Both R/o 123, Shrub Hollow Road,
Hamilton Park, New York,
11576, U.S.A.
- 2i. Rekha S. Talwadkar, daughter
- 2j. Satish S. Talwadkar, son in law
Both r/o Addhakrishna Building
1st floor, St. Inez, Panaji-Goa.
- 2k. Alka D. Sardessai, daughter
21 Mr. Digambar B. Sardessai, son in law
Both r/o A-101,
Suman Apartments, Lokhandwala Complex,
Andheri (West) 400 053.
3. Suresh D. Naik,
C/o Hotel Republica,
Opp. Old Secretariat,
Panaji- Goa.

..... Respondents

(Addresses are registered addresses for service)

Mrs. A. Agni, Senior Advocate with Adv. A. Naik for the Applicant.
Mr. S. D. Lotlikar, Senior Advocate with Advocate C. Padgaonkar for
Respondent nos. 1, 2 (b).

Coram:- C. V. BHADANG, J.

Date:- 17th January 2018.

Oral Order:

This application is styled as an application for clarification/correction
and/or review under section 151 r/w section 114 of the Code of Civil
Procedure 1908 (Code, for short) r/w Article 227 of the Constitution of India

of the judgment dated 8/12/2016 passed by this Court (F. M. Reis, J) in W.P. No.1148 of 2016 (referred to as the said judgment).

2. The dispute between the parties has a long and checkered history. However, for the limited purpose of deciding the present application it would not be necessary to set out the facts in details. Suffice it to mention that the respondents/plaintiffs filed an application on 23/9/2016 seeking the production /reliance upon the following documents:

- a) Complaint dated 17/2/2016 along with the annexures thereto.
- b) Letter dated 10/03/2015 addressed to the Commissioner of Excise along with the annexures thereto. (There is a typographical error in mentioning the year as 2015, instead of 2016)
- c) Application dated 11/3/2016 under Right to Information Act addressed to the Public Information Officer, Office of the Commissioner of Excise, Panaji, Goa.
- d) Letter dated 11/3/2016 from the Asst. Commissioner of Excise furnishing information sought by the plaintiff under his letter dated 11/3/2016 consisting of report of Superintendent of Excise dated 11/3/2016 and the noting of the Commissioner of Excise in the context of the complaint made by the plaintiffs.

3. The learned trial court had rejected the said application by order dated 12/10/2016 which was challenged by the respondents before this Court in W.P. No.1148/2016. This Court by a judgment and order dated 8/12/2016 has set aside the order dated 12/10/2016 passed by the trial court and the respondents (i.e. petitioners in the said petition) were granted leave to rely upon the said documents “as mentioned in the application dated 23/9/2016”.

4. At the outset it may be mentioned that Smt. Agni, the learned Senior Counsel for the applicant has submitted that the present application is essentially for clarification/modification and not for review. Thus the rival contentions raised on behalf of the applicant are being considered only to examine the question whether the said judgment dated 8/12/2016 in W.P. No.1148/2016 needs any clarification/modification.

5. The contention essentially is that in the body of the said judgment there are certain observations indicating that this Court had only allowed the production and reliance being placed on the report and the office notings and not the annexures to the complaint. In other words, the learned Senior Counsel for the applicant has submitted that the petitioners are not taking exception to the order permitting production of the report and the office noting. The specific contention is that the annexures to the complaint could

not have been allowed to be produced particularly in view of the fact that such production was disallowed by this Court in the earlier petitions being W.P. No.715/2015, W.P. No.239/2016, W. P. No.241/2016 and W.P. No.242/2016. It is thus submitted that in para 16 and 17 of the said judgment this Court has erroneously mentioned “the documents as sought in the application dated 23/9/2016.” The contention essentially is that this Court never intended to allow the production of the annexures to the complaint of which the production was already refused. In order to demonstrate this Ms. Agni, the learned Senior Counsel has extensively taken me through the body of the said judgment.

6. Reliance is placed on the decision of the Supreme Court in the case of **Samarendra Nath Sinha and another Vs. Krishna Kumar Nag** AIR 1967 SC 1440 , **Board of Control For Cricket In India and another Vs. Netaji Cricket Club and others** (2005) 4 SCC 741 and **State of Gujarat Vs. Sardarbegaum and others** (1976) 3 SCC 416, in order to submit that the Court in an appropriate case can issue such clarification/modification, if necessary. Except this there are no other contentions raised.

7. Shri Lotlikar, the learned Senior Counsel for the respondent no.1

and 2(b) has strenuously urged that the application as framed and filed is not maintainable. It is submitted that Hon'ble Shri Justice F.M. Reis who had passed the judgment was available till 9/8/2017 and there was no attempt made to get such modification/clarification, which would have been appropriate. It is submitted that the attempt by the applicant to seek such clarification/modification after Justice F.M. Reis had demitted office cannot be countenanced. For this purpose reliance is placed on the decision of this Court in Civil Application (Review) No.6 of 2015 in S.A. No.99/2009 dated 7/12/2014.

8. It is submitted that the report on which the reliance is now sought to be placed is subsequent to the disposal of W.P. No.715/2015, W.P. No.239/2016, W. P. No.241/2016 and W.P. No.242/2016. It is submitted that if the said judgment of this Court in W.P. no.1148/2016 is read in its entirety, it is clear that this Court had specifically come to the conclusion that the documents as well as the grounds now urged on behalf of the respondent for production/reliance are different. It is submitted that the operative order in the said petition is clear enough to suggest that all the documents as were referred to in the application dated 23/9/2016 have been allowed. The learned Senior Counsel has placed reliance on the decision of the Supreme Court in the case **State of Haryana and Others Vs. M. P. Mohia (2007) 1 SCC 457**

and Ram Chandra Singh Vs. Savitri Devi and others AIR 2004 SC 4096 in order to submit that the applicants are essentially seeking “review”, under the garb of an application for modification/clarification which would not be permissible. It is submitted that no case for clarification/modification of the said judgment is made out. The learned Senior Counsel has submitted that all that this Court has allowed is production of the documents which would be subject to proof in accordance with law and as such, there is no prejudice caused.

9. I have given my anxious consideration to the rival contentions and the submissions made and I do not find that any case for clarification/modification is made out.

10. At the outset, it may be mentioned that the learned trial court by an order dated 8/12/2016 had issued summons to the Commissioner of Excise, which order was challenged by the applicant in W.P. No.898/2017. The said petition was disposed off on 6/12/2017. Para 11 of the said order reads as under:

“The issue in the present petition concerns as to the legality of the order passed by the learned Trial Court. All that the learned Trial Court has done by the impugned order is issuing summons to the

Commissioner of Excise. It cannot be accepted that the Trial Court has committed an impropriety in doing so. The learned Trial Court abided by the order passed in Writ Petition No.1148/2016, by which, this Court while taking note of the judgment and order dated 30/10/2015, passed in Writ Petition No.715/2015, has permitted production of the documents as mentioned in the application dated 23/9/2016. In my considered view, on the basis of the judgment and order dated 8/12/2016, passed in Writ Petition 1148/2016, as it stands today, no exception can be taken to the impugned order as passed. In that view of the matter, the petition is dismissed.”

It is in these circumstances that the applicants are praying for clarification/modification of the judgment dated 8/12/2016 in W.P. No. 1148/2016.

11. Indisputably the report of the Excise authority is subsequent to the disposal of W.P. No.715/2015, W. P. No.239/2016, W. P. No.241/2016 and W.P. No.242/2016. This Court after extensively referring to the facts as well as the submissions based on the order passed in the aforesaid three petitions had clearly come to the conclusion that the documents as well as the grounds for production as raised in W.P. No.1148/2016 are different than what were available when the earlier petitions were decided. This would be clear from the observations and findings recorded by this Court in para 13 of

the judgment. It would be significant to note that although at this stage, the objection is restricted to the annexures to the complaint, when W.P. No.1148/2016 was argued, there was objection to all the documents as are referred to in the application dated 23/9/2016 on behalf of the applicants. Thus this Court had no occasion to consider the question whether the complaint bereft of the annexures can only be allowed to be produced on record. It is trite that the judgment has to be read as a whole and the final order as passed has to be given effect to. In paras 16 and 17 of the said judgment this Court had clearly held that the respondents are entitled to produce the documents as are referred to in the application dated 23/9/2016. In my considered view there is nothing in the said judgment to suggest that this Court had allowed the production of the documents except the annexures to the complaint and any such finding cannot be read into it.

12. Although it was strenuously urged on behalf of the applicant that there was no delay in filing this application, it would be significant to note that in para 17 of the judgment in W.P. No.1148/2017 this Court had permitted production of the documents “as referred in the application dated 23/9/2016.” Thus for all practical purposes the applicants were put on notice and were aware, on 8/12/2016 that this Court had granted leave to rely upon the “said documents as mentioned in the application dated 23/9/2016”, which

evidently includes the annexures to the complaint. If according to the applicants there was a discrepancy in the observation as contained in the body of the judgment and the final order passed, they could have and ought to have taken steps for getting any such error corrected from this Court (F.M. Reis, J) which has not been done. It was submitted by the learned Senior Counsel for the applicant that the application dated 23/9/2016 was rejected by the trial court only on 12/10/2016 and as such, there is no delay. The contention in my considered view cannot be accepted. This is because the judgment in respect of which now clarification is sought was passed way back in December 2016.

13. The reliance placed on **Samarendra Nath Sinha** and the **Board of Control for Cricket (supra)** to my mind is misplaced. There cannot be any manner of dispute with the proposition that in an appropriate case this Court can issue clarification. However, it would depend upon facts and circumstances of each case.

14. In the case of **SardarBegaum (supra)** a petition was filed against the abolition of political pension and it was prayed that the same may be continued in perpetuity . Later in response to a concession by the State, the words “in perpetuity” were deleted. None the less, the High Court directed

the payment to the heirs as well. In such circumstances it was held that there was a manifest error in directing the State to pay the pension even to the heirs of the deceased when the said prayer was deleted.

15. In so far as the case of **Board of Control for Cricket (supra)** reliance is placed on paras 87, 91 and 92 of the judgment. It would be significant to note that in that case there was an application for review filed unlike in the present case. In my considered view the said case turned on its own facts.

16. Lastly in the case of **Samarendra Nath Sinha (supra)** it is held that there is inherent power in the Court which passes the judgment to correct the clerical mistakes or an error arising from the accidental slip or omission and to vary its judgment, so as to give effect to its intention. The judgment in my considered view cannot come to the aid of the applicant for the simple reason that it is not the case that there is a clerical mistake or accidental slip in the judgment. The contention is that the ultimate order permitting the respondent to rely on all the documents as are referred to, in the application dated 23/9/2016 is not in consonance with the observations in the body of the judgment.

17. There can be varied circumstances in which a party would be required to approach the Court in relation to any judgment and order passed, namely:

(i) For correcting clerical or arithmetical errors and/or errors arising out of accidental slip or omission (ii) For clarification, if there is any ambiguity or vagueness found in the judgment, which needs to be addressed to (iii) For modification which normally is required on account of any subsequent developments or circumstances which have come to the knowledge of any party, which have a bearing on the issue involved and lastly (iv) For review which requires that there is an error apparent on the face of the record.

As noticed earlier, the learned Senior Counsel for the applicant has submitted that this is not an application for review. Thus, it is not necessary to examine whether there is an error apparent on the face of the record. It also cannot be said that there is any clerical or arithmetical error and/or an error arising out of an accidental slip or omission. It is nobody's case that there are any subsequent developments or circumstances which came to the fore or knowledge of the applicant which would necessitate modification. Thus, the only prayer which can be examined is about clarification which would presuppose that there is any ambiguity or the judgment is otherwise vague. As noticed earlier the judgment read as a whole does not indicate that there is any ambiguity and on the contrary it shows that this Court had granted leave

to the respondents to rely upon the documents “as mentioned in the application dated 23/9/2016.” There is nothing to suggest that the annexures to the complaint were intended to be excluded.

18. It is trite that under the garb of clarification/modification the applicant cannot seek a review of the judgment. In any event the learned Senior Counsel for the respondent is right in submitting that the report or the complaint bereft of the annexures would be a truncated document and it could never have been intended that the complaint without annexures was only allowed to be produced. In such circumstances, I do not find that any case for clarification/modification is made out. The application is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

ap/-