

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****CIVIL APPELLATE JURISDICTION*****REVIEW PETITION NO. 73 OF 2014****IN****WRIT PETITION NO. 2992 OF 2011****Nilkanth Nagar Co-op.Housing Society                      ..... Petitioner****VERSUS****Bhuvneshwar Rajkishor Tripathi & Ors.                      ..... Respondents**

Mr.P.S.Dani, Senior Advocate, i/b. Mr.P.P.Kulkarni for the Petitioner.

Mr.S.H.Kankal, A.G.P. for the State – Respondent nos. 4 and 5.

Mr.Bhuvneshwar Rajkishor Tripathi – Respondent no.1 present in person.

**CORAM :     R.D. DHANUKA, J.**

**DATE        :     13<sup>th</sup> AUGUST, 2018**

**P.C.**

By this review petition, the review petitioner (original petitioner) in Writ Petition No.2992 of 2011 seeks recall of the order dated 26<sup>th</sup> September, 2013 passed by this court in Writ Petition No.2992 of 2011 and prays that the said writ petition be heard afresh.

2.     The review petitioner had filed a writ petition (2992 of 2011) *inter alia* praying for a writ of certiorari and for quashing the order dated 1<sup>st</sup> March,2011 passed by the learned Minister, Co-operation thereby cancelling the registration of the petitioner society.

3.     The respondent no.1 herein had filed a civil suit *inter alia*

praying for a declaration that the petitioner society had no right, title or interest whatsoever in the suit property or the structure which was the subject matter of the said suit. The said suit was initially dismissed by the City Civil Court and was subject matter of the First Appeal No.1454 of 2003 filed by the respondent no.1 herein before this court. First Appeal No.1454 of 2003 was heard along with Writ Petition No.2992 of 2011 by this court. On 26<sup>th</sup> September, 2013, this court ordered that the first appeal and the writ petition were disposed of in terms of the directions rendered in the said order. It was also directed that the rule in the writ petition was made absolute accordingly.

4. Pursuant to the said order passed by this court, the City Civil Court heard the suit filed by the respondent no.1 herein and dismissed the said suit. However, there are certain findings recorded by the City Civil Court in the judgment and decree dated 9<sup>th</sup> December, 2014. One of the finding recording by the City Civil Court is that the learned Minister has already de-registered the society and thus the petitioner can neither sue nor could not be sued.

5. It is not in dispute that the petitioner has already preferred first appeal in this court challenging some of the findings recorded by the City Civil Court in the said judgment and decree dated 9<sup>th</sup> December, 2014 and the same is pending.

6. In my view, there is an error apparent on the face of the order passed by this court on 26<sup>th</sup> September, 2013 insofar as the writ petition is concerned. Though this court has observed that the writ petition

filed by the petitioner is allowed, no reliefs are granted to the petitioner in the said writ petition.

7. The reliefs sought in the writ petition could not be dependent upon the reliefs sought by the respondent no.1 in the plaint S.C.Suit No.5813 of 1996. Be that as it may, the City Civil Court has dismissed the suit filed by the respondent no.1 also considering the fact that the learned Minister has already de-registered the petitioner society and thus the society could not be sued.

8. In view of the apparent error on the face of the record, in my view provisions of the Order 47 Rule 1 of Code of Civil Procedure, 1908 stands attracted.

9. Insofar as the order dated 26<sup>th</sup> September, 2013 passed by this court to which my attention was invited by the respondent no.1 who appears in person in the Civil Application No.4199 of 2013 filed by the respondent no.1 in support of the submission that application for variation and modification is already rejected and thus this review petition is not maintainable is concerned, a perusal of the Civil Application No. 4199 of 2013 filed by the petitioner clearly indicates that the said civil application was filed under Order 41 Rule 21 of the Code of Civil Procedure, 1908 and had prayed for variation and modification of the order passed by this court on 26<sup>th</sup> September,2013 only insofar as First Appeal No.1454 of 2003 is concerned. The said order thus relied upon by the respondent no.1 in support of the submission that this review petition is not maintainable is of no

assistance to the respondent no.1.

10. I, therefore, pass the following order :-

(a) The order dated 26<sup>th</sup> September,2013 passed by this court is recalled insofar as disposal of the Writ Petition No.2992 of 2011 is concerned.

(b) Writ Petition No.2992 of 2011 is restored to file and shall be heard on its own merits without being influenced by the observations made by this court in the order dated 26<sup>th</sup> September,2013 in First Appeal No.1454 of 2003 along with Writ Petition No.2992 of 2011.

11. Review petition is allowed in the aforesaid terms. There shall be no order as to costs.

12. The review petitioner would be at liberty to apply for clubbing of the said first appeal filed by the review petitioner along with writ petition before the Hon'ble Chief Justice.

**[R.D. DHANUKA, J.]**