

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 127 OF 2017
IN
WRIT PETITION NO. 9589 OF 2017

Mahesh Jayantilal Vora

]...Petitioner

versus

District Deputy Registrar (IV)
Co-operative Societies, Mumbai and ors.

]...Respondents

Mr. Umesh Yadav i/b Mr. Ashok Kumar Mishra, Advocate for petitioner.

Ms. G. P. Golatkar, AGP for Respondent Nos. 1 to 3.

Mr. Nitin Gangal for Respondent No. 4.

CORAM : M. S. SONAK, J.

DATE : 28 MARCH, 2018

PC:-

1] Yesterday, this review petition was on board. Since neither the petitioner nor his Advocate were present, the same was ordered to be dismissed for non prosecution. However, before the order could be signed, Mr. Yadav mentioned the matter in the chamber and accordingly, the order was not signed but the review petition was placed for hearing today.

2] The only ground urged in this review petition is that by the time the order dated 04.10.2017, of which review is applied for, was

made, on the previous date, i.e. on 03.10.2017, the assignment had changed and taking into consideration the subject matter of the petition, this Court did not have the assignment to take up writ petition No. 9589 of 2017. On this ground, it is urged that the order dated 04.10.2017 is without jurisdiction, null and void and ought to be declared as such or recalled. In support, Mr. Yadav, placed reliance on *M/s. Lakh Enterprises and Anr vs. M/s. Agar Distributors (India) and Ors. 2013(3) BomCR 766* and *State of U.P. and Ors. vs. Neeraj Chaubey and Ors. (2010)10 SCC 320*.

3] Mr. Gangal, learned counsel for Respondent No.4, submits that it is the petitioner, who had moved for placement of the matter before this Court. He submits that the matter was argued without any demur and now that the petition has been decided against the petitioner, such review petition has been instituted. He submits that the order of this Court is not void ab-initio or one without jurisdiction. At the highest, this would amount to some irregularity. Mr. Gangal submits that this is not a case for exercise of review jurisdiction.

4] From the record, it is quite clear that it is the petitioner, who had moved this Court seeking for urgent relief. The matter was fully argued by both the parties and was disposed off by order dated 04.10.2017. This is an important circumstance for deciding whether exercise of review jurisdiction is at all warranted.

5] In *M/s. Lakh Enterprises (supra)*, a matter, which, under Rules of the Bombay High Court Rules, 1980, was required to be heard

by Division Bench, was heard and decided by the single Judge. It is in these circumstances, review jurisdiction was exercised. Learned single Judge of this Court in *M/s. Lakh Enterprises (supra)* relied upon the decision of the Honourable Supreme Court of India in the case of *State of U.P. and Ors. vs. Neeraj Chaubey and Ors.(supra)*.

6] The decision of the Honourable Supreme Court in the case of *State of U.P. and Ors. vs. Neeraj Chaubey and Ors.(supra)* has been considered by the Honourable Supreme Court of India itself in the case of *Kishor Samrite vs. State of Uttar Pradesh And Others (2013) 2 Supreme Court Cases 398*. In this case, it is categorically held that merely because the matter may have been taken up by the Bench, which may not have had the assignment, the order rendered cannot be treated as invalid ab-initio. The Honourable Supreme Court has held that it may be an administrative lapse but normally would not render the Division Bench or court of competent jurisdiction as lacking inherent jurisdiction and its orders invalid ab-initio. The Honourable Supreme Court has held that such an order may not necessarily be vitiated in law, particularly when the parties participate in the proceedings without any objection and protest. This is the clear answer to the only ground raised in support of this review petition.

7] The relevant observations in paragraph 30 of the *Kishor Samrite* (supra), reads as under:

“30. We have already cited various judgments of this Court where matters relating to the roster and constitution of the Benches fall within the exclusive domain of the Chief Justice of the High Courts concerned. Transfer of a petition may not necessarily result in lack of inherent jurisdiction.

It may be an administrative lapse but normally would not render the Division Bench or court of competent jurisdiction as lacking inherent jurisdiction and its orders being invalid ab initio. Such an order may necessarily not be vitiated in law, particularly when the parties participate in the proceedings without any objection and protest. This, however, always will depend on the facts and circumstances of a given case.”

8] Accordingly, no case is made out for exercise of review jurisdiction. Review petition is, therefore, dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Tendulkar