

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION (L) NO.19 OF 2018
IN
WRIT PETITION NO. 2075 OF 2015**

**Capt. Vipin Kumar Chand
Vs.
Union of India & Ors**

**..Petitioner

..Respondents**

**Mr. R. G. Panchal a/w Mr. Mohan Rawal, Mr. Anil Jaiswal and Mr. A. R. Kori for the Petitioner
Mr. K. M. Naik Senior Advocate i/b Mr. M. D. Nagle for the Respondent Nos.2 & 3
Mr. D. N. Mishra for the Respondent No.1**

**CORAM :R. M. SAVANT, &
R. G. KETKAR,JJ
DATE : 11th APRIL, 2018**

P.C.

1 Heard Mr. Panchal, learned Counsel for the Petitioner and Mr. Naik, learned Senior Counsel for Respondents No.2 & 3, at length.

2 By this Petition under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the Petitioner has sought review of the order dated 14-2-2018 passed by this Court (Coram:- R. M. Borde and R. G. Ketkar JJ). By that order, the Court issued Rule in the Petition and vacated the interim order. Paragraph 2 of that order reads thus:

2. It is stated in the earlier affidavit dated 8 July 2015, presented on behalf of Respondent Nos.2 and 3 that in pursuance to the order of transfer dated 17 November 2014, the Petitioner was directed to report at ISM and ISPS Department, HO Mumbai. Due to present litigation the said

post is vacant as on today. Captain N. S. Rege has already moved to Tuticorin and Captain Pramod Kumar has already reported at MTI, Powai and as such the Petitioner, as well as, Captain Pramod Kumar have been attending MTI, Powai. In this view of the matter, interim relief granted by this Court on 10 June 2015 and continued thereafter, shall stand vacated.

3 Mr. Panchal submitted that aggrieved by order dated 14-2-2018, the Petitioner filed Special Leave Petition before the Apex Court. In the order dated 5-3-2018, the Apex Court recorded the submission of the Petitioner that narration given in paragraph 2 of the impugned order by the High Court is not factually correct in as much as certain subsequent events which had taken place, have not been taken note of by the High Court. In that view of the matter, the Apex Court permitted the Petitioner to approach this Court by filing a Petition seeking review of the order dated 14-2-2018. In pursuance thereof the present Review Petition is filed.

4 Mr. Panchal invited our attention to the following documents:

- (i) Transfer order dated 30-6-2016 of Captain Pramod Kumar from P & A-MTI, Powai to ISM & ISPS, Nariman Point with immediate effect;
- (ii) Transfer order dated 19-9-2017 of Captain Nishikant S. Rege from Tuticorin to Mumbai ISM Cell w.e.f. 03-10-2017;
- (iii) Transfer order dated 12-1-2016 of Captain Rakesh Johri from ISM division to SVP (ISM & ISPS), Nariman Point.

5 Mr. Panchal submitted that by the impugned transfer order dated 17-11-2014, the Petitioner is transferred from MTI, Powai to Head Office, Nariman Point in ISM and ISPS Department. The Petitioner was transferred at the place of Captain Nishikant S. Rege. Though this Court stayed the impugned transfer order, which was to replace Captain Nishikant S. Rege, the Respondents malafidely transferred Captain Nishikant S. Rege to Tuticorin. Similarly the Respondents malafidely transferred Captain Pramod Kumar to MTI, Powai to replace the Petitioner. Vide order dated 30.6.2016 Captain Pramod Kumar was again transferred to ISM & ISPS Department, Nariman Point, Mumbai. Similarly vide order dated 19.9.2017 Captain Nishikant S. Rege was transferred back from Tuticorin to ISM & ISPS Department, Nariman Point. The Respondents, however, did not bring this fact to the notice of the Court when the order dated 14-2-2018 was passed. He submitted that since the narration in paragraph-2 of the order dated 14-2-2018 is factually incorrect and does not take subsequent events which had taken place, the said order is required to be reviewed.

6 On the other hand, Mr.Naik submitted that the Petitioner was transferred by order dated 17.11.2014 and there is no connection between the subsequent transfer orders relied by the Petitioner. He submitted that no case is made out for reviewing order dated 14-2-2018.

7 We have considered the rival submissions advanced by the learned Counsel for the parties. We have also perused the material on record. We have already extracted paragraph-2 of the order dated 14-2-2018. Against this order, the Petitioner preferred SLP before the Apex Court. The SLP was disposed of by the Apex Court on 5.3.2018 by passing the following order :

“ Learned counsel for the petitioner submits that the narration given in paragraph 2 of the impugned order by the High Court is not factually correct inasmuch as certain subsequent events which had taken place, have not been taken note of by the High Court. In that view of the matter, we permit the petitioner to approach the High Court by filing a review petition seeking review of the impugned order.

 The special leave petition stands disposed of.”

8 A perusal of the above extracted portion shows that the Apex Court recorded the submission advanced by the Petitioner that the narration given in paragraph-2 of the order dated 14-2-2018 is not factually correct inasmuch as certain subsequent events which had taken place, have not been taken note of by the High Court. It is in that view of the matter, the Apex Court permitted the Petitioner to approach this Court by filing a Review Petition.

9 A perusal of paragraph-2 of the order dated 14-2-2018 shows that it was based upon the assertions made by the Respondents in their affidavit-in-repl0y dated 8-7-2015 and in particular paragraphs-7(g) and 7(h). The Petitioner filed rejoinder dated 16.7.2015 and dealt with paragraph-7(g) in

paragraph-13 and paragraph-7(h) in paragraph-14. Affidavit-in-sur-rejoinder was filed by Respondents No.2 and 3 on 1.9.2015. The Petitioner filed additional affidavit on 21.10.2016. Respondent No.3 filed affidavit-in-reply dated 21.11.2016. A perusal of these affidavits does not even remotely indicate reference to the transfer orders which are relied by the Petitioner for the first time in the present case. Mr. Panchal, does not dispute that this material was not placed on record when the order was passed by this Court on 14-2-2018.

10 Mr.Panchal submitted that the Petitioner was not aware of these transfer orders. It is not possible to accept this submission. Admittedly the Petitioner was working at MTI, Powai. By order dated 30.6.2016, Captain Pramod Kumar was transferred from MTI, Powai to ISM & ISPS, Nariman Point. It is, therefore, not open to the Petitioner to contend that he was not aware of this development.

11 Apart from this, a perusal of the Review Petition also does not indicate making of any ground for review. Order XLVII Rule 1 of C.P.C. lays down that any person considering himself aggrieved 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 order was made, or on account of some mistake or error

apparent on the face of the record, or for any other sufficient cause, may apply for a review of the order.

12 After perusing the Review Petition, we are satisfied that no grounds contemplated by Order XLVII Rule 1 of C.P.C. are made out for review of the order dated 14-2-2018. In view thereof, we do not find that the order dated 14-2-2018 suffers from any mistake or error apparent on the face of record. Thus, no case for review of the order dated 14-2-2018 is made out. Hence, Review Petition is dismissed reserving liberty to the Petitioner to take out appropriate proceedings and seek relief on the basis of documents referred in paragraph-4 of this order, if permissible in law. All contentions of the Respondents in that regard are expressly kept open. Order accordingly.

[R. G. KETKAR, J]

[R.M.SAVANT, J]