

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAO) NO.1115/2018

IN

M.C.A. STAMP NO.5200/2018

IN

SPECIAL CIVIL APPLICATION NO.325/1972 (D)

Sukhdeo Sadu Bhagat through L.Rs. Punjaji Sukhdeo Bhagat and others
..Vs..

Shrinarayan S/o Surajmal Agrawal through L.Rs. Smt. Shantabai W/o
Shrinarayan Agrawal and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.L. Khapre, Advocate for the applicants.

CORAM : Z.A. HAQ, J.

DATE : 10.8.2018.

1. Shri R.L. Khapre, learned Advocate for the applicants has submitted that in view of order passed by this Court on Civil Application (CAO) No.44/2018 in M.C.A. Stamp No.17327/2017 in Writ Petition No.4974/2014 on 4th April, 2018 holding that limitation is not provided for filing application seeking review of the judgment and order passed under Article 226 of the Constitution, the civil application is not pressed. The civil application is **disposed** accordingly. In the circumstances, the parties to bear their own costs.

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2. By this application, the applicants (original petitioners) seek review of the judgment passed by this Court in Special Civil Application No.325/1972 on 2nd

November, 2017.

The above referred judgment was passed *ex parte* as none appeared for the petitioners. The relevant facts are recorded in the judgment itself. When special civil application was taken up for hearing, Shri N.R. Patil, learned A.G.P. was requested to assist the Court as the matter was very old and voluminous. When this matter is called out today Shri N.R. Patil, A.G.P. was waiting for some matter in which he represents State Government and, therefore, he was requested to assist the Court.

3. The submission on behalf of the applicants (original petitioners) is that the judgment passed by this Court on 2nd November, 2017 suffers from an error apparent on the face of record as this Court has overlooked that appeal filed by the petitioners before Sub-Divisional Officer under Section 107 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short “the Act of 1958”) was maintainable. The learned Advocate for the applicants has pointed out that Section 107(1)(a-i) was added by the Maharashtra Act No.17 of 1966 because of which appeal under Section 107(1) of the Act of 1958 came to be provided against an order passed under Section 6 of the Act of 1958. To support this submission reliance is placed on the judgment given by this Court in the case of *Pandhari Ramji Timade and others V/s. Jagdamaba Devi Deosthan, Nagpur and another* reported in **AIR 1972 Bombay 123**.

It is argued that as appeal filed by the petitioners before Sub-Divisional Officer was maintainable and was rightly decided in favour of the petitioners, this Court should have set aside the order passed by the Maharashtra Revenue Tribunal and the matter should have been remanded to the Tribunal for deciding the revision application filed by the respondents / landlord on merits, and this having not been done, the judgment is required to be reviewed and special civil application is required to be restored for deciding it after hearing the applicants / tenants.

4. It is submitted on behalf of the applicants that the provisions of Section 107(1)(a-i) of the Act of 1958 and the judgment given by this Court in the case of *Pandhari Ramji Timade and others V/s. Jagdamaba Devi Deosthan, Nagpur and another* (supra) could not be pointed to this Court earlier as Advocate Shri S.A. Jaiswal, who represented the petitioners, was not keeping well and could not appear when the special civil application was heard and decided. It is further submitted that the petition could not be amended after remand by the Hon'ble Apex Court as Shri S.A. Jaiswal was not keeping well.

5. Shri N.R. Patil, learned A.G.P. has pointed out the judgment delivered by the Hon'ble Supreme Court in Petition for Special Leave (C) No.7033/2005 on 4th July, 2017. It is pointed out that the issue whether appeal filed by the tenants before Sub-Divisional Officer was maintainable or not cannot be considered by this Court,

as the Hon'ble Apex Court dealt with this issue and after recording the submission made by Mr. Bhatt, learned Senior Advocate appearing for the tenants before the Hon'ble Supreme Court, it came to be recorded that the High Court should deal with the *lis* on merits.

6. As far as submission made on behalf of the applicants that they are deprived of the opportunity of pointing out their case to the Court is concerned, I find that there are no *bona fides*. By judgment delivered on 4th July, 2017 the Hon'ble Apex Court allowed the appeal filed by the applicants and remanded the matter to this Court with a request to dispose the special civil application within six months. The applicants were represented by Advocate before Hon'ble Apex Court and had been aware about the judgment passed by the Hon'ble Apex Court. The specious plea now taken by the applicants regarding illness of their Advocate cannot be accepted.

7. As far as the submission made on behalf of the applicants that appeal filed by them before the Sub-Divisional Officer under Section 107 of the Act of 1958 was maintainable, it also cannot be considered. The learned Senior Advocate, who represented the applicants in Petition for Special Leave (C) No.7033/2005, admitted that the appeal filed by the applicants before the Sub-Divisional Officer was not maintainable and the matter proceeded on that basis and the Hon'ble Supreme Court remanded the matter to this Court to decide the *lis* on merits. If the applicants had

urged before the Hon'ble Supreme Court that appeal filed by them before the Sub-Divisional Officer was maintainable, then the matter would have been remanded to the Maharashtra Revenue Tribunal for deciding the revision application on merits and the matter would not have been remanded to this Court for deciding the *lis* on merits. In view of the judgment delivered by the Hon'ble Apex Court, it is not open for the applicants to agitate and it is not possible for this Court to delve into the issue of maintainability of appeal before the Sub-Divisional Officer.

8. In view of the above, I do not find that there is any error apparent on the face of record which necessitates review of the judgment delivered by this Court in Special Civil Application No.325/1972 on 2nd November, 2017.

9. The miscellaneous civil application is **dismissed**.

10. While deciding the Special Civil Application No.325/1972 this Court noticed that there was an attempt on the part of the applicants to protract the matter and, therefore, Shri N.R. Patil, A.G.P. was appointed to assist the Court. The applicants were directed to pay an amount of Rs.20,000/- (Rs. Twenty Thousand) to Shri N.R. Patil, A.G.P. I find that this miscellaneous civil application is filed on or about 1st March, 2018. The applicants have not shown due diligence in prosecuting the matter. *Prima facie*, an impression is created that the application is filed only to

protract the matter and continue in possession of land in respect of which the landlord is agitating before competent Authority since last about half century. In addition to appreciation, which is required to be recorded for the assistance given by Shri N.R. Patil, A.G.P. in this matter having chequered history, I feel it appropriate that the applicants shall pay Rs.20,000/- (Rs. Twenty Thousand) to Shri N.R. Patil, A.G.P. by demand draft and produce receipt of it on record within two months.

JUDGE

Tambaskar.