

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

Civil Application (CAO) No.1225 of 2017
in
Misc. Civil application (Review) St. No.11978/2017
in
First Appeal No.780/2017
(Kishor Parmanand Gherwara .vs. Darwha Nagar Parishad, Darwha and
another.)

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

Mr. A.M. Ghare, Advocate for Applicant.
Mr. Rahul Tajne, Advocate for Respondent No.1.
Mr. V.A. Thakre, AGP for Respondent No.2.

...

CORAM : NITIN W. SAMBRE, J.
DATED : AUGUST 31, 2018.

This is an application for condonation of delay of three days in preferring an application for review. For the reasons disclosed and since not objected by the respondent no.1, the application stands allowed.

Misc.Civil Application (Review) St. No.11978/2017.

The present review application is directed against the order of remand passed by this Court on 05.04.2017 in an appeal which was preferred by the respondent-Municipal Council, against the judgment dated 30.04.2016 delivered by the Reference Court, granting enhancement @ Rs.150/- per square foot for 0.7 R. land and 0.23 R. land out of Survey Nos. 14/1 and 15/1 of mouza Darwha, tahsil Darwha, district Yavatmal.

2. While granting such enhancement, sale instances of adjoining taluka which is located almost 25 kms. away, a big market place in the Yavatmal district, was found to be unreasonably relied upon.

3. Accordingly this Court quashed and set aside the judgment delivered by the Reference Court and with consent of the parties, remanded the matter back to the learned Civil Judge, Senior Division to decide the reference afresh.

4. Mr. Ghare, learned counsel for the applicant would submit that the judgment delivered by this Court under review is contrary to the view expressed by the Apex Court in the matter of **Municipal Corporation, Hyderabad .vs. Sunder Singh** reported in **(2008) Supreme Court Cases 485**. According to him, the order of remand passed by this Court under Order 41 Rule 23 of the CPC, the conditions precedent therein are not satisfied. He would then urge that this Court was duty bound to decide the appeal on merits instead of remanding the matter back. He would draw support from the observations made in paragraphs 23, 32 and 33 of the said judgment.

5. Mr. Tajne, the learned counsel for the respondent no.1- acquiring body and the learned APP supports the order of remand. According to the respondents, just because there is a change in counsel in review petition will not give a cause for seeking review of the judgment in appeal. He would then urge that the

the earlier order is based on the consent extended by the applicant and once the order is passed by consent, it is not open for the appellant to seek review of the consent order. He would then urge that the factual matrix in the matter of **Municipal Corporation, Hyderabad .vs. Sunder Singh** (supra) will not be attracted, in the facts and circumstances of the case in hand. He would try to distinguish the same qua the facts of the present appeal. In addition, support is also drawn from the recent judgment of this Court in the matter of **Sasi (Dead) through L.Rs. .vs. Aravindakshan Nari and ors** reported in **2017 AIR (SCW) 1432**. He would submit that the review is by no means to assail a judgment on merits like that of the powers conferred in an appellate Court where the entire factual matrix is required to be appreciated. However, a review can be maintainable only if there is a patent error is noticed. According to him, even if a substantial question of law arises, that would not be per se a conclusive cause for the earlier order to be reviewed and draw support from the judgment of the Apex Court in the matter of **Thungabhadra Industries .vs. Government of A.P.** reported in **AIR (SC) 1372**. He would submit that there is no error or mistake apparent on the face of record. He thus sought dismissal of the present application.

6. Considered rival submissions.

7. The order of which the applicant-land owner is seeking review, was passed after hearing the present applicant. The fact remains that the order under review

speaks of restriction of claim by the present applicant to the extent of Rs.150/- per sq. ft. for the acquired land and the sale instance of Arni town located some 25 kms. away, considered in L.A.C. No.2073 of 2004 was formed to be basis for awarding compensation. This Court has furnished the reasons viz. how the irrelevant sale instance was formed to be the basis for granting exorbitant compensation of Rs.150/- per sq.ft. This court also noted that a Government Lawyer who represented the respondent-Municipal Council was not authorised to do so. As such the purport of the order under review is also to provide opportunity to the acquiring body having noticed that there are financial consequences. Not only this, the applicant has agreed to appear before the Court below on 28.04.2017. This Court also expedited the hearing of the reference after demand as the proceedings were pending since 1992 with direction to decide the same within six months.

8. The present applicant-land owner without complying with the said order and extending cooperation to the Reference Court in deciding the reference afresh, has filed present application and prolonged the proceedings before the Reference Court for obvious reason of drawing extra financial mileage particularly in the proceedings in which there is no scope for review. Change in counsel, in my opinion, cannot be a ground for preferring a review and the conduct of the applicant, in my opinion, deserves to be deprecated in strong words, particularly keeping in mind the consent extended in the order under review. Such conduct also needs to be dealt

with an iron hand and as such it is ordered that the applicant-review petitioner shall deposit costs of Rs.25,000/- before the Reference Court for preferring present application with ulterior motive.

9. Apart from above, if this Court appreciates the judgment cited by the learned counsel for the applicant so as to claim that the appeal should have been decided by this Court on merits, the reasons cited in the order under review viz. the consideration of non-relevant material for granting exorbitant enhancement and denial of opportunity of hearing to the respondent-Municipal Council, were not the issues in the matter of **Municipal Corporation, Hyderabad .vs. Sunder Singh** (supra) cited by the learned counsel for the applicant. One more reason for ordering remand was the evidence needs to be appreciated by the Reference Court particularly the relevant evidence and not the irrelevant which was earlier appreciated. The applicant has failed to demonstrate how his case fits into the requirement of Order 41 Rule 23 and Rule 23-A of the C.P.C. As such the said judgment will be hardly of any assistance to the applicant. The Apex Court while dealing with the scope of review in the matter of **Sasi (Dead) through L.Rs. .vs. Aravindakshan Nari and ors** (supra)in paragraphs 7 and 8 has observed thus:-

"7. In Thungabhadra Industries Ltd. v. Govt. of A.P., AIR 1964 SC 1372 the Court while dealing with the scope of review had opined:-

"What, however, we are now concerned with is whether the statement in the

order of September 1959 that the case did not involve any substantial question of law is an error apparent on the face of the record. The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an error apparent on the face of the record, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by error apparent. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

8. In *Parsion Devi v. Sumitri Devi*, 1997(4) R.C.R. (Civil)458: (1997) 8 SCC 715, the Court after referring to *Thungabhadra Industries Ltd. (supra)*, *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 and *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, (1979)4 SCC 389 , held thus:-

"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be

allowed to be an appeal in disguise."

10. In the wake of aforesaid observations, what is required to be noticed is the applicant is seeking rehearing in the review petition of the main appeal without pointing out any patent error. That being so, I hardly notice any substance in the application. The application as such fails and is rejected with costs of Rs.25,000/- to be deposited in Reference Court within period of six weeks from today.

11. Let the respondent no.1 be permitted to withdraw the costs. Reference Court shall make every endeavour to decide reference within six months from the date of deposit of costs. If the cost as ordered is not deposited, the reference shall stand dismissed automatically.

Rajendra
Gajananrao
Halwai

Digitally signed
by Rajendra
Gajananrao
Halwai
Date: 2018.09.07
11:25:36 +0530

JUDGE

halwai