

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
REVIEW PETITION IN CIVIL REVISION
APPLICATION [ST] NO.1427 OF 2019
IN
CIVIL REVISION APPLICATION NO.558 OF 2018

Lucia Anthony Pereira] Review Petitioner

IN THE MATTER BETWEEN:

Lucia Anthony Pereira] Orig. Applicant

Vs.

Maria Gomes and others.] Respondents

.....

Mr. Rohan Sawant i/b Nilesh Acharya , learned Counsel for the Petitioner.
Mr. Vikas Murudkar, learned Counsel for Respondents.

.....

CORAM : R.G. KETKAR, J.

DATE : 19TH MARCH, 2019.

P.C.

Not on board. At the request of Mr. Sawant, taken up for admission.

2. By this Petition under section 114 r/w 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 29th October, 2018 passed by this Court in C.R.A No.558 of 2018. By that order, C.R.A instituted by the petitioner was dismissed. The petitioner had instituted C.R.A challenging the judgment and decree dated 23rd December, 2013 passed by the learned Judge, Court Room No.9 of the Court of Small Causes at Mumbai in L.E. Suit No.185/214 of 2007

as also the judgment and decree dated 20th August, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai. By these orders, the Courts below decreed the suit instituted by the plaintiffs and directed defendant No.2 and respondent No.5, hereinafter referred to as 'defendant No.1' to hand over vacant and peaceful possession of Flat No.301, 3rd floor, B Wing, Our Lady of Lourdes Co-operative Housing Society Ltd., situate in property bearing E.P. No.557 of TPS No.III, Marinagar, Opp. Mahim Railway Station, Mahim, Mumbai – 400 016 (for short, 'suit premises') to the plaintiffs within three months from the date of the order.

3. In support of this Petition, Mr. Sawant submitted that the petitioner has made application on 19th November, 2018 under Right to Information Act, 2005 (for short 'R.T.I Act'). The petitioner for the first time came to know that the building where the suit premises is situate is under re-development. Re-development is carried out in pursuance of Regulation No.33 (7) of the Development Control Regulations of Greater Mumbai, 1991 (for short 'Regulations'). He submitted that as per section 2 (17) of the Maharashtra Regional and Town Planning Act, 1966, actual occupier is entitled to allotment of permanent alternate accommodation on ownership basis. As the petitioner was not aware of the fact that re-development is carried out under regulation No.33 (7), the said fact could not be brought on record before the Courts below as also before this Court. He submitted that the order under review suffers from the errors of law apparent on the face of the record. He, therefore, submitted that the order under review deserves to be recalled, thereby, restoring C.R.A to its original position.

4. On the other hand, Mr. Murudkar submitted that eviction decree is executed and the respondents/plaintiffs have obtained possession of the suit premises. He further submitted that the contentions raised on Regulation

No.33(7) cannot be agitated for the first time in this Court. The application under the R.T.I Act was made after disposal of the C.R.A. No explanation is given for not filing this application during pendency of the suit, during pendency of the appeal or even during pendency of C.R.A. Hence, no case is made out for review of the order dated 29th October, 2018.

5. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the Courts below have decreed the suit. Defendant No.2 contended that the suit is barred by limitation, suit is bad for non joinder of necessary parties i.e the landlords and the developer. Defendant No.2 became owner by adverse possession. In other words, defendant No.2 was very much aware that the property where the suit premises is situate is under re-development and, therefore, came with the case that the suit is bad for non joinder of the developer. The Courts below held that defendant No.2 and other defendants were gratuitous licensee in the suit premises.

6. In so far as plea of adverse possession is concerned, the basic ingredients constituting in the plea of adverse possession were also lacking in the present case. The Courts below accordingly decreed the suit. A perusal of the orders passed by the Courts below do not remotely indicate that the petitioner has raised contention based upon regulation No.33 (7). Even that contention was not raised before this Court at the time of hearing of the C.R.A. Thus, contentions which are sought to be raised and the documents sought to be relied on were never forming part of the record of the proceedings of the Courts below or this Court. Therefore, it cannot be said that there is any error apparent on the face of the record. Equally, no explanation is coming forward for filing application under R.T.I on 19th November, 2018, that is to say, after disposal of C.R.A. The petitioner cannot feign ignorance about redevelopment

being carried out in the building where suit premises is situate and where she was residing.

7. In the case of **Kamlesh Verma Vs. Mayawati, AIR 2013 SC 3301**, the Apex Court has considered the scope of review and has observed thus :

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is 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. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of C.P.C. ”

Applying the tests laid down by the Apex Court in the above decision to the facts of the present case, I am more than satisfied that no ground is made out for review of the order dated 29th October, 2018. Hence, Review Petition fails and the same is dismissed. Order accordingly.

[R.G. KETKAR, J.]