

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
REVIEW PETITION [STAMP] NO.3935 OF 2019
IN
WRIT PETITION NO.1997 OF 1995

Dattatray Nagappa Naidu	]	
(since deceased through L.Rs.)	]	
1A. Vijay Dattatray Naidu and others.	]	Petitioners
Vs.		
Ranjanwadi Shikshan Trust, Ranjanwadi,	]	
Mahabaleshwar, A Public Trust	]	
registered under the Bombay Public	]	
Trust Act, 1950 ,	]	
Through its present trustees;	]	
1A. Sattar Abdullah Shaikh and others.	]	Respondents

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Mr. V.S. Talkute, learned Counsel for the Petitioners.

Mr. Ibrahim Merchant, learned Counsel for Respondent No.1.

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CORAM : R.G. KETKAR, J.

DATE : 15TH FEBRUARY, 2019.

P.C.

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

2. Heard Mr. Talkute, learned Counsel for the petitioners and Mr. Merchant, learned Counsel for respondent No.1 at length.

3. 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 applicants have sought review of the order dated 21st December, 2018 (Coram: M.S. Sonak, J.) in Writ Petition No.1997 of 1995 with Civil Application No.2274 of 2017 and Civil

Application No.1351 of 2017. By that order, the learned Single Judge allowed the Writ Petition instituted by the respondents and quashed and set aside the judgments and decrees dated 18th August, 1989 and 11th July, 1994 passed by the Courts below. This Court decreed the suit on the ground of reasonable and bona fide requirement as contemplated by section 13 (1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act').

4. By administrative order dated 21st December, 2018, the Applications/Petitions for review/clarification of the orders or Speaking to the Minutes to the orders passed by the Single Judge who is not available are placed before the Single Judge before whom the main matter would lie if it were pending. As Hon'ble Mr. Justice M.S. Sonak, is not available for judicial work at Mumbai, Mr. Talkute got the papers produced today for interim protection as the respondents are likely to execute the decree.

5. In support of this Petition, Mr. Talkute submitted that the Courts below did not answer issue of comparative hardship as they held that the respondents/plaintiffs did not establish the ground of reasonable and bona fide requirement under section 13 (1) (g) of the Act. In view thereof, this Court should have remitted the matter to the trial Court or the District Court for recording finding on the question of comparative hardship.

6. Mr. Talkute submitted that this Court acted as Appellate Court while dealing with issue of reasonable and bona fide requirement as also comparative hardship. This Court re-appreciated the entire evidence as if it was exercising powers of the Appellate Court under section 96 r/w Order-XLI of the C.P.C. In short, he submitted that this Court over stepped its jurisdiction while exercising powers under Article 227 of the Constitution of India. He submitted this amounts to error apparent on the face of the record. Lastly, he submitted

that this Court observed that the document referred in paragraph 49 namely application of the petitioner Trust for registration of the Trust is not on record. The said observation is factually incorrect and contrary to record. In fact, the application is very much on record. Mr. Merchant submitted that the application of the petitioner Trust is at Exhibit 99 and not at Exhibit 100. He, therefore, submitted that judgment and order dated 21st December, 2018 in Writ Petition be reviewed and Writ Petition No.1997 of 1995 be restored and re-heard on merits.

7. On the other hand, Mr. Merchant supported the order under review. He submitted that while allowing the Writ Petition, the learned Single Judge held that the Courts below have virtually ignored the evidence on the issue of bona fide requirement and comparative hardship. The Courts below misdirected themselves into surmising and conjecturing and proceeding on the assumptions. The Courts below failed to evaluate and assess the evidence adduced on behalf of the plaintiffs in respect of reasonable and bona fide requirement. He submitted that the learned Single Judge referred to the decisions of the Apex Court while dealing with exercise of jurisdiction by the High Court under Articles 226 and 227 of the Constitution of India and after considering the material on record, decreed the suit. He, therefore, submitted no ground is made out for reviewing the order.

8. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In so far as the first contention of Mr. Talkute that the Courts below did not answer issue of comparative hardship as the plaintiffs did not establish reasonable and bona fide requirement is concerned, a perusal of the trial Court's order shows that the learned trial Judge has framed Issue No.7 on the question of comparative hardship. The learned trial Judge has answered that issue in paragraph No.21.

After considering the evidence on record, the learned trial Judge held that comparative hardship will be more to the defendant in case the eviction decree is passed. In so far as District Court's judgment is concerned, the learned District Judge framed Point No.4 for deciding the comparative hardship. The said point was answered in paragraph 21 and the learned District Judge recorded a finding that greater hardship will be caused to the defendants and not the plaintiffs. In view thereof, I do not find any merit in the submission of Mr. Talkute that the High Court should have remitted the matter to the trial Court or the District Court as no finding is recorded on the issue of comparative hardship.

9. The next submission advanced by Mr. Talkute is that this Court acted as Appellate Court while answering issue of reasonable and bona fide requirement as also comparative hardship. This Court re-appreciated the entire evidence as if it was exercising powers of the Appellate Court u/s 96 r/w Order-XLI of C.P.C. This Court overstepped its jurisdiction while exercising powers under Article 227 of the Constitution of India.

10. I do not find any merit in this submission. The learned Single Judge was conscious of the fact that the Courts below have dismissed the suit and he was exercising powers under Article 227 of the Constitution of India. This is evident from paragraph 46 of the order. In paragraph 46, the learned Single Judge observed that the purpose for referring to the depositions is not to re-assess or re-evaluate the evidence on record. The only purpose for reference is that all such evidence on the issue of bona fide requirement and comparative hardship has virtually been ignored by the Courts below which proceeded to deny the petitioners decree of eviction on the ground of reasonable and bona fide requirement by adverting to some completely irrelevant considerations and at time even misreading, if not mis-construing the evidence on record.

11. The learned Single Judge referred to the case of reasonable and bona fide requirement pleaded by the plaintiff as also aims and objects of the plaintiff-Trust. In paragraphs 53 and 54, the learned Single Judge observed that the Courts below were clearly in error in denying decree of eviction on the ground that objects of the plaintiff-Trust do not entitle to impart religious education of Muslim boys. The Courts below misdirected themselves in law in going into the issue as to whether the plaintiff-Trust will get enough students to attend their school if they secure the suit premises. The Courts below misdirected themselves into surmising and conjecturing that the plaintiffs will not have financial capacity or means to start a school of the nature which they proposed to start.

12. While considering issue of comparative hardship, in paragraph 66, the learned Single Judge observed that there is overwhelming material on record which establishes that the issue of comparative hardship is required to be decided in favour of the plaintiffs. The admissions of Mr. Ashok Naidu, sole witness deposed on behalf of the defendant as to acquisition of the premises for both residential and commercial purpose, was noted. It was observed that all these evidence was not even looked into while deciding issue of comparative hardship. In paragraph 71 and 72, the learned Single Judge referred to the decisions of the Apex Court dealing with power of the High Court while exercising jurisdiction under Article 227 of the Constitution of India. In paragraph 73, the learned Single Judge observed that the findings recorded by the Courts below are vitiated by perversity in the sense that they are contrary to law as well as the evidence on record. The findings are based upon manifest misreading of the evidence on record and also are vitiated by the vice of not even advertent to the overwhelming evidence on record.

13. As far as contention of Mr. Talkute that the documents referred in paragraph 49 namely application of the plaintiff-Trust is not on record is concerned, I do not find any merit in this submission. The learned Single Judge observed in paragraph 49 that the application for registration of the Trust is at Exhibit 100. It is evident from the record that application is at Exhibit 99. In other words, it cannot be said that the application is not on record.

14. In the case of **Parsion Devi Vs. Sumitri Devi (1997) 8 SCC 715**, the Apex Court observed in paragraph 10 that, “There is a clear distinction between **an erroneous decision and an error apparent on the face of the record**. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction.” Even if, I accept the submissions of the petitioners, at the highest the decision dated 21st December, 2018 can be treated as an erroneous consideration. I do not find that there was any mistake or any error apparent on the face of the record while passing the order dated 21st December, 2018.

[Emphasis supplied]

15. In the case of **Suman Dattatraya Kadam Vs. Shobha Kailas Bonekar & Ors., 2007(3) Bom. C.R. 518**, more particularly in paragraph 4 thereof, the Special Bench comprising of five learned Judges of this Court referred to the decision of Apex Court in **Aribam Tuleshwar Sharma Vs. Ariban Pishak Sharma and Ors., A.I.R. 1979 S.C. 1047** dealing with the scope and ambit of power of the High Court while entertaining an application for review. The relevant portion reads thus;

“It is true that there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inhere in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But there are definitive limits to the exercise of the power of review. The power of

review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Side Court to correct all manner of errors committed by the Subordinate Court.”

16. In paragraph 5, the Special Bench referred to the decision of **Lily Thomas Vs. Union of India and Ors., A.I.R. 2000 S.C. 1650**, where the Apex Court was dealing with the powers of review in reference to Article 137 and under the Supreme Court Rules. The Special Bench extracted paragraphs 53 and 55 as under;

“It is well settled that a party is not entitled to seek review of a judgment delivered by this Court merely for the purpose of a rehearing and fresh decision of the case. Normal principle is that a judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.”

“...But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except 'where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.’”

“It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.”

17. 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. ”

18. Applying the tests laid down by the Apex Court in the above decisions to the facts of the present case, I am more than satisfied that no ground is made out for review of the order dated 21st December, 2018 . Hence, Review Petition fails and the same is dismissed. Order accordingly.

[R.G. KETKAR, J.]