

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION (ST.) NO.7628 OF 2019

IN

WRIT PETITION NO.2740 OF 2018

Sarvamangal Mercantile Co. Ltd. ... Petitioner

Versus

Mohatta Bros. Property Co. & another ... Respondents

Mr. Nilesh Ojha and Mr. Partha Sarkar i/b. Mr. Abhishek Mishra for Petitioner.
Mr. Dinesh Tiwari a/w. Mr. Swapnil Ambure, Mr. M. Dey, Mr. Ranjeet Prasad,
Mr. Mayuri Mayekar i/b. Mr. Dinesh Tiwari and Associates for Respondent
No.1.

CORAM : R. G. KETKAR, J.

RESERVED ON : 2ND AUGUST, 2019

PRONOUNCED ON: 14TH AUGUST, 2019

ORDER :

Heard Mr. Ojha, learned Counsel for the petitioner and Mr. Tiwari,
learned Counsel for the respondent No.1.

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 order dated 19.04.2018 passed by this Court in Writ Petition No.2740 of 2018. That Writ Petition was filed by Sarvamangal Mercantile Co. Ltd. - defendant No.1 in R.A.E. Suit No.801/1620 of 1996 challenging the order dated 17.02.2018 passed by the Appellate Bench of the Small Causes Court in Marji Application No.186 of 2017 in Appeal No.322 of 2016 arising from R.A.E.Suit No.776/1588 of 1996. By that order, the appellate Court rejected the application filed by the defendant No.1 under Section 340 of the

Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for taking action against the respondent No.1, Mohatta Brothers Property Company, a partnership firm (plaintiffs) under Sections 191, 192, 199, 200, 465, 466, 471, 474, 120-B and Section 34 Indian Penal Code, 1860 (for short 'I.P.C.') and under contempt for filing false affidavit and obtaining eviction order by suppression and dishonest concealment of facts. The Appellate Court dismissed the application on the ground that it is premature.

3. By order dated 19.04.2018, the application filed by the defendant No.1 under Section 340 of Cr.P.C. itself was dismissed invoking *suo motu* powers under Article 227 of the Constitution of India. Aggrieved by order dated 19.04.2018 passed by this Court, petitioner preferred S.L.P. before the Apex Court. By order dated 20.08.2018, the Apex Court dismissed the S.L.Ps. The petitioner has now filed Petition seeking review of order dated 19.04.2018.

4. In support of this Petition, Mr. Ojha submitted that the order dated 19.04.2018 passed by this Court dismissing the application filed under Section 340 of Cr.P.C. is without jurisdiction. He relied upon paragraph 28 of ***Khoday Distilleries Vs. Mahdeshwara Sakkare, (2019) 4 SCC 376*** to contend that as the S.L.P. was dismissed in *limine* without giving any reason, the review petition filed by the petitioner in the High Court is maintainable and ought to be decided on merits.

5. Mr. Ojha submitted that this Court exercised civil jurisdiction against the order passed under Section 340 of Cr.P.C. He has invited my attention to paragraph 2 of the order dated 19.04.2018. He further submitted that against rejection of application under Section 340 of Cr.P.C., Writ Petition under Articles 226 and 227 of the Constitution of India is not maintainable. He relied

upon paragraph 22 of the constitution Bench judgment in ***Iqbal Singh Marwah Vs. Meenakshi Marwah*, (2005) 4 SCC 370.**

6. He relied upon the decision of ***Surendra Gupta Vs. Bhagwan Devi*, (1994) 4 SCC 657** to contend that only proceedings under Section 482 of Cr.P.C. would be maintainable and Court cannot exercise powers under Article 227 of the Constitution of India. He further submitted that only the provisions of Cr.P.C. are required to be followed and the provisions of C.P.C. are not applicable. He relied upon paragraphs 12, 14, 15, 18 and 19 of ***Union of India Vs. Haresh Milani*, 2017 (4) Mh.L.J.441.** He submitted that the plaintiff being accused has no right to participate in the proceedings. He relied upon Full Bench decision of this Court in ***Emperor Vs. Bhatu Sadhu Mali*, AIR 1938 Bom.225** and ***Kareem Fatima Vs. Faheeb*, 2009 ALL.M.R. (Cri.) 21.** As the order dated 19.04.2018 is without jurisdiction, it deserves to be recalled.

7. Mr. Ojha relied upon the decision in ***M. S. Ahlawat Vs. State*, (2000) 1 SCC 278** to contend that to perpetuate an error is no virtue but to correct it, is a compulsion of judicial conscience. Statutory procedure provided under Sections 195 and 340 of Cr.P.C. ought to be followed whenever the Court has noticed that proceedings before it have been tampered with production of forged or false documents or any statement has been found to be false. He relied upon paragraphs 22, 23, 39 and 40 of ***Kanwar Singh Saini Vs. High Court Delhi*, (2012) 4 SCC 307.** Mr. Ojha contended that when this Court is assigned with the civil jurisdiction, it cannot exercise power under Section 482 of Cr.P.C. Proceedings under Section 482 of Cr.P.C. were assigned to other Court. In support of this submission, he relied upon ***Trident Steel Engineering Company Vs. Vallourec*, 2018 SCC Online Bom. 4060.** For all these reasons,

he submitted that order under review deserves to be recalled.

8. On the other hand, Mr. Tiwari relied upon decision in ***Sunil Vasudeva Vs. Sundar Gupta, 2019 (8) SCALE 41***. In this case, the Apex Court referred to the decision of ***Kamlesh Verma Vs. Mayawati, 2013 (8) SCC 320*** to contend that review proceedings cannot be equated with the original hearing of the case. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error. He, therefore, submitted that no case is made out for reviewing order dated 19.04.2018.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, Writ Petition No.2740 of 2018 was filed challenging the order dated 17.02.2018 passed by the Appellate Bench of the Small Causes Court in Marji Application No.186 of 2017 in Appeal No.322 of 2016 arising from R.A.E.Suit No.776/1588 of 1996. The Petition was heard on 14.03.2018 and was adjourned to 22.03.2018 at 3.00 p.m. Parties were put to notice that subject to the time constraint and convenience of the Court, Petition would be disposed of finally on that date. While deciding the Petition, the Court would consider the issue as regards maintainability of the application filed by the petitioner under Section 340 of Cr.P.C. Accordingly, the parties advanced elaborate submissions. After considering the material on record, by order dated 19.04.2018, Writ Petition was dismissed by exercising *suo motu* powers under Article 227 of the Constitution of India. Application filed by the petitioner under Section 340 was dismissed on the ground that it is misconceived and not at all tenable.

10. Mr. Ojha submitted that this Court was assigned civil work and was not

assigned criminal business. The orders impugned in the Writ Petition can be tested only by filing proceedings under Section 482 of Cr.P.C. and not in Civil Writ Petitions, that too, by invoking powers under Article 227 of the Constitution of India. He submitted that in the process, the valuable right of appeal under Section 341 of Cr.P.C. is lost forever to the petitioners. I do not find any merit in any of the submissions. It is not in dispute that the applications were filed in the Suits filed by the respondent No.1-plaintiff invoking the grounds of eviction. This Court considered the question about maintainability of the applications filed under Section 340 of Cr.P.C. After considering threadbare assertions made in the applications, this Court came to the conclusion that the applications filed under Section 340 were wholly misconceived and not tenable. The decision of the Apex Court in ***Surya Dev Rai Vs. Ram Chander Rai, (2003) 6 SCC 675*** was considered extensively in paragraphs 36 to 41. In view thereof, I do not find that the decisions relied by Mr. Ojha, referred hereinabove, advance the case of the petitioner.

11. In the case of **Kamlesh Verma** (*supra*), the Apex Court while considering scope of review 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 re-heard 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.”

12. Applying the tests laid down by the Apex Court in the case of **Kamlesh**

Verma (*supra*), I do not find that any ground is made out for seeking review of the order dated 19.04.2018. In view thereof, Review Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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