

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.86 OF 2013
IN
REVIEW PETITION (ST.) NO.20004 OF 2011
IN
WRIT PETITION NO.2203 OF 1995

Sharad Murlidhar Shukla and others ... Petitioners
Vs.
Shankar Ramkrushna Lakade ... Respondent

Mr. M. S. Lagu for Applicants / Petitioners

CORAM : R. G. KETKAR, J.
DATE : JULY 19, 2019

P.C. :

Heard Mr. Lagu, learned Counsel for the applicants / petitioners.

2. This is an application for condonation of delay of 107 days in filing the Review Petition. As I am inclined to dispose of the Review Petition finally, without issuing notice to the respondent, delay of 107 day is condoned and Review Petition is taken up for admission. Civil Application is disposed of.

3. Review Petition (St.) No.20004 of 2011 filed under Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') takes exception to the order dated 10.03.2011 passed by this Court (Coram: V. M. Kanade, J.) in Writ Petition No.2203 of 1995. By that order, this Court dismissed the Petition instituted by the petitioner challenging the judgment and decree dated 11.03.1994 passed by the learned 2nd Additional District Judge, Nashik in Civil Appeals No.32 of 1990 and 33 of 1990. By that order, the learned District Judge allowed the appeals and set aside the eviction decree passed by the trial Court.

4. In support of this Petition, Mr. Lagu has invited my attention to the findings recorded by this Court on the question of partition between landlord and his brothers. He submitted that the learned District Judge was not justified in holding that in order to evict the tenant, partition was effected and it was an artificial arrangement made only for the purpose of evicting the tenants. He submitted that the learned District Judge could not have recorded any finding on the factum of partition between landlord and his brothers. The same error was committed by this Court while dismissing the Petition. He submitted that as the order suffers from several errors of law apparent on the face of record, the order deserves to be recalled thereby restoring the Petition to its original position for disposal of the same in accordance with law.

5. I have considered the submissions advanced by Mr. Lagu. I have also perused the material on record including the order passed by the learned District Judge. In paragraph 10, the learned District Judge has referred to the partition effected between the family of the landlord in the year 1975. The learned District Judge noted that no attempt was made for production of partition memo, which was effected in between landlord and his brothers. This Court affirmed the findings recorded by the learned District Judge to the effect that it was an artificial arrangement made only for the purpose of evicting the tenants. In view thereof, I do not find that any ground is made out for review of the order dated 10.03.2011.

6. 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. ”

7. Applying the tests laid down by the Apex Court to the facts of the present case, no ground is made out for review of the order dated 10.03.2011. Review Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab