

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

REVIEW PETITION (L) NO.21392 OF 2019
IN
WRIT PETITION NO. 4250 OF 2018

Sheikh Abdul Kased and ors.

...Petitioners

vs.

Kalpesh Babulal Jain and ors.

...Respondents

Mr. Chirag Mody with Aniket Warlikar I/by Deven Dwarkadas for the petitioners.

Mr. R.D.Soni with Dharam Sharma, Uma Sharma I/by Sachin Chowdhari for the respondents.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 18th September 2019

PC :

Two persons—the review petitioners—claiming to be the absolute owners sued a tenant for eviction: RAE & R Suit No.1016 of 2016. Pending that suit, two more persons—the respondents—wanted to come on record as defendants. It was on the grounds that they, too, are co-owners. But the trial Court rejected their claim. So they have filed the above writ petition. On

parallel lines, these two persons' claim led to a title dispute and a suit: S. C. Suit No.443 of 2015. In that suit, an interlocutory order took the parties to this Court: AO No.462 of 2017 and other proceedings. In those proceedings, the rival parties—that is the conflicting co-owners—filed consent terms, which prompted this Court to give certain directions. One such direction is that in any legal proceedings initiated by one set of co-owners, the other set must be made parties.

2. When this Court's earlier directions were placed before me, on 21st June 2019 I disposed of this writ petition. I have held that the putative co-owners ought to be brought on record.

3. Now, the respondents in the writ petition, that is the plaintiffs, have filed this review petition.

4. Shri Chirag Mody, the learned counsel for the review petitioners, has submitted that on 21st June 2019, when this Court passed the order under review, the review petitioners could not bring to my notice a vital factor—the pending review petition in the AOs. Shri Mody has, then, stressed that this Court rendered the judgment, dated 21st June 2019, based on its earlier observations in AO No.462 of 2017 and other proceedings. But, by then, there had been a review petition pending against the so-called consent order, dated 20th July 2017, in AO No.462 of 2017 and other proceedings. The

review petitioners, however, inadvertently omitted to mention about the review petition, so submits Shri Mody.

5. So long as the review petition remains pending, according to Shri Mody, the judgment in the ROs cannot be termed final. And, by the same reckoning, any further directions, or even judgments, based on the earlier under-the-review judgment cannot be sustained.

6. Besides, Shri Mody has also emphasised that once a co-owner prosecutes a case, it is not mandatory that every other co-owner should also be made a party. For the inquiry in eviction proceedings does not affect the title disputes, if any, among the alleged co-owners.

7. In response, Shri Soni, the learned counsel for the respondents-petitioners, has submitted that the review petitioners might have filed a review petition in the AOs, in 2017. But they have not, till now, pursued the matter. At any rate, he has contended that the review petitions in the previous AO and in this Writ Petition are misconceived.

8. Heard Shri Chirag Mody for the review petitioners and Shri Soni for the respondents.

9. As noted earlier, the scope of review is limited. I may take note that the review petitioners may have filed a review petition against this Court's earlier judgment in the AOs. But mere pendency of that review petition,

first, does not dilute the judgment, date 20th July 2017, in the AOs. Second, nor does it impinge on the present proceedings in WP No.4250 of 2018. A sliver of hope to succeed in a pending review does not empower the review petitioner to nullify or negate the judgment sought to be reviewed. The consequences flow unhindered. And it is too tenuous a plea to be countenanced.

10. The review petitioners did contend that all co-owners need not contest tenancy proceedings. Granted a co-owner sues not only for himself but also for other co-owners, he cannot, then, obstruct the willing co-owner to come on record—if not as a plaintiff, at least, as a defendant. But I need not address that issue in this revision because I do not desire to revisit the matter on merits—nor does a review petition provide any justification for that.

11. Succinctly stated, the review petitioners want the Court to review its judgment because their review petition in some other proceedings is pending. The judgment now sought to be reviewed may have stemmed from the previous judgment. But a party's effort to have that judgment reviewed, until it actually results in the reversal, provides no cause of action for review in other collateral proceedings.

Under these circumstances, I find no reason to review the judgment

dated 21.6.2019. I accordingly dismiss the review petition.

(DAMA SESHADRI NAIDU, J.)