

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.47 OF 2019
IN
WRIT PETITION NO.11037 OF 2018
WITH
CIVIL APPLICATION NO.248 OF 2019 IN RPW NO.47 OF 2019

Nirmala Bajirao Hande ... Petitioner
Vs.
Sandeep Ramchandra Vinerkar and others ... Respondents

Mr. Satish K. Kumar for Petitioner.
Mr. Akshay R. Kapadia for Respondent No.1.
Mr. A. R. Metkari, AGP for Respondents No.2 and 3-State.

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

P.C. :

Heard Mr. Kumar, learned Counsel for the petitioner, Mr.Kapadia, learned Counsel for the respondent No.1 and Mr. Metkari, learned AGP for respondents No.2 and 3-State at length.

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.'), petitioner has sought review of the order dated 09.10.2018 passed by this Court in Writ Petition No.11037 of 2018. By that order, Petition was dismissed in limine.

3. In support of this Petition, Mr. Kumar submitted that petitioner is owner of flat No.A-303, 3rd floor, Suryoday CHS Group No.2, Tagore Nagar, Vikroli (E), Mumbai - 400 083 (for short 'suit premises'). He submitted that the Authorities below were not justified in allowing the proceedings instituted by the first respondent under Section 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act'). He submitted that the order under review suffers from several errors of law apparent on the

face of record. As the petitioner is owner of the suit premises, this Court was not justified in upholding the orders passed by the Authorities below under Section 24 of the Act.

4. On the other hand, Mr. Kapadia has invited my attention to paragraphs 5 and 8 of the order dated 09.10.2018. He further submitted that the petitioner also did not comply the order dated 28.09.2018 passed by this Court whereby this Court directed the petitioner to deposit the amount as per clause (iii) of the order dated 10.01.2018 passed by the Competent Authority subject to the adjustment of Rs.31,500/- within one week from the date of the order. He submitted that it was made clear that if the petitioner does not deposit the amount within the stipulated time as per clause (iii) of the order dated 10.01.2018 passed by the Competent Authority, the ad-interim order shall stand vacated without further reference to the Court.

5. Mr. Kumar submitted that petitioner has deposited Rs.1,00,000/- by Demand Draft dated 05.10.2018. A perusal of the clause (iii) of the operative part of the order dated 10.01.2018 shows that petitioner was directed to deposit monthly licence fees of Rs.21,000/- from September 2015 onwards.

6. It is not in dispute that the petitioner is in possession of the suit premises. Thus, as on 31.07.2019, amount of arrears of compensation comes to Rs.9,66,000/-. In view thereof, the submissions of Mr. Kumar that petitioner has deposited Rs.1,00,000/- in this Court does not advance the petitioner's case. While dismissing the Petition, it was noted that the parties entered into leave and licence agreement on 10.11.2014. The suit premises was given for residential purpose. In view of explanation (b) to Section 24, the agreement of leave and licence in writing is a conclusive evidence of facts stated therein. In view thereof,

no case is made out for reviewing the order dated 09.10.2018.

7. It has come on record that petitioner had earlier instituted Suit for specific performance of contract. The same was withdrawn unconditionally. Subsequently, the petitioner instituted Suit for specific performance of contract. Respondent No.1 filed application under Order VII, Rule 11(d) of C.P.C. for dismissal of the Suit. That application was allowed and the subsequent Suit filed by the petitioner was dismissed. Thus, as on date, plaintiff is not declared as owner of the suit premises.

8. 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. ”

9. 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 09.10.2018. Review Petition fails and the same is dismissed. In view of the dismissal of the Review Petition, nothing survives in Civil Application No.248 of 2019 for stay. C.A. is disposed of accordingly.

10. Respondent No.1 is permitted to withdraw Rs.1,00,000/- unconditionally. Order accordingly.

(R. G. KETKAR, J.)