

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**REVIEW PETITION (L) NO.3 OF 2019
IN
ARBITRATION PETITION NO.275 OF 2006**

1 Saraswati Ramchandra Ghanate
(since deceased)

2 Ramakant Ramchandra Ghanate ... Petitioner

Versus

John Peter Fernandes

And Another ... Respondents

• • • • •

Mr. Rohaan Cama I/b Mr. Shriram S. Redij for the Petitioner.

Mr. Rishabh Shah I/b Mr. Baptist D'Souza for Respondent No.1.

• • • • •

CORAM : S.C. GUPTE, J.

DATE : 25 MARCH 2019

P. C. :

This review petition seeks review of an order passed by this Court by consent of parties in an arbitration petition.

2 The arbitration petition was in challenge of an award passed by a sole arbitrator in a reference arising out of an agreement for sale of immovable property. The Respondents to the review petition, who were the respondents to the arbitration petition, were claimants in the arbitration reference. They sought specific performance of the agreement for sale. The arbitrator in his impugned award rejected the Respondents' claim for specific performance. The arbitrator, however, held that the Respondents had proved having paid a sum of Rs.11.5 lacs to the

Petitioners herein towards the suit agreement for sale. The arbitrator held that there being no right of forfeiture under the agreement, the Petitioners had to refund this amount to the Respondents. This order was challenged before this Court. The challenge concerned both receipt of Rs.11.5 lacs by the Petitioners and their right to forfeit the amount. It was the Petitioners' case that they had not received any amount from the Respondents towards the sale of the property and that in any event, they had a right to forfeit the amount under the agreement. After the matter was heard at some length, both parties agreed to dispose of the petition by consent. The disposal order dated 12 December 2018 records as follows :-

“. After the matter is heard at some length, it is agreed between the parties that the impugned award may be set aside and the matter be remanded to a new Arbitrator for a fresh hearing. It is, however, agreed between the parties that the finding of the learned arbitrator in the impugned award that an amount of Rs.11,50,000/- was paid by the Respondents herein to the Petitioners under the suit agreement for sale, shall be treated as a finding accepted by the parties. The question as to whether this amount is liable to be refunded or whether the Petitioners are entitled to forfeit the same, shall alone be considered by the arbitrator on remand. The parties will be free to lead further evidence and make submissions on this limited issue in the remand hearing. Accordingly, the impugned award is set aside and the disputes are remanded to a new arbitrator for a fresh consideration as per the above observations.

2

3”

2 The present review petition is on the footing that the review petitioner was under a misapprehension that what was being asked of him was to agree to a remand of the arbitral reference to a new arbitrator on

both issues, namely, (i) whether or not, as a matter of fact, an amount of Rs.11.5 lacs was paid by the Respondents to the Petitioner under the suit agreement for sale; and (ii) whether the amount, if any, paid by the Respondents was liable to be refunded or whether the Petitioner was entitled to forfeit the same. It is submitted that since the consent given by the Petitioner was based on this misapprehension, the order under review may be recalled and the arbitration petition may be heard on merits.

3 The jurisdiction of a Civil Court to review its own order is to be found under Order 47 Rule 1 of the Code of Civil Procedure, 1908. Order 47 Rule 1 envisages that a person, who, from the discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order was made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, could apply for such review.

4 Learned Counsel for the Petitioner submits that the expression 'for any other sufficient reason' is wide enough to include a mistake or misapprehension as indicated above. Learned Counsel relies on the judgment of the Supreme Court in the case of **S. Nagaraj Vs. State of Karnataka**¹, the judgement of our court in the case of **Marathwada Legal and General Education Society Vs. Varsha Manohar Dhongade**² and the judgement of Madras High Court in the case of **Rekanti Chinna Govindra Chettiar Vs. S. Varadappa Chettiar**³ in support of his submissions.

1 1993 Supp. (4) Supreme Court Cases 595

2 2018 (3) Bom.C.R.297

3 50 L.W. 568 Part 14

5 No doubt, these judgments do indicate that the expression 'for any other sufficient reason' in Order 47 Rule 1 has to be given an expanded meaning; a decree or order passed under misapprehension as to the true state of circumstances has been held to be a sufficient ground for exercising the power of review. Court of record or superior courts are said to have inherent powers, which are to be exercised in the interest of justice or to prevent the abuse of process of court. Abuse of process or prevention of miscarriage of justice referred to in this context may be as a result of misapprehension by counsel and not generally on account of some misapprehension said to have been entertained by the party before the Court. It will be difficult, particularly, in the context of an arbitration petition, where the court scrutinizes an award in challenge before it merely from the standpoint of a possible view and not an impossible view, to review any order on account of any apprehension such as this. Though it is difficult to recollect at this point of time what actually transpired before the Court so many months back, after going through the award and having regard to the record of the case, at least this much is clear that this Court could not have come to the conclusion that the arbitrator's view on receipt of the amount was an impossible view which merited interference. What appears more likely in the event was that the Court, impressed by the argument of learned Counsel for the Petitioner that the question of exercising forfeiture by the Petitioner was not properly considered by the Court, would have posed a query to both parties, whether they were prepared to remit this latter question for a fresh consideration to a new arbitrator; both Counsel, after seeking instructions from their respective clients, would have reverted to the Court that they were agreeable to do so. Having done so and particularly, after the other side consented to remand

the matter on the basis of the Petitioner's consent, it is not permissible to rely on a misapprehension of the client to make a fundamental change to the order passed by this court. Both counsel had sought instructions from their respective clients and after receipt of such instructions, the agreement was reported to this Court, which the Court accepted and in terms of which the Court disposed of the arbitration petition. There is, thus, no merit in the review petition. The review petition is, accordingly, dismissed.

6 In view of the order above, there shall be no order on the Respondents' praecipe for Speaking to the Minutes. The praecipe is disposed of.

(S.C. GUPTE, J.)