

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION NO. 103 OF 2019

IN

WRIT PETITION NO. 3442 OF 2015 (D)

(GOKUL SHRIRAMJI RAUT & OTH. //VS// STATE OF MAHARASHTRA, THR. SECRETARY & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.G.Bhangde, Sr. Advocate a/b Shri S.N. Tapadia, Adv. for applicants.
Ms Tajwar Khan, A.G.P. for Respondent Nos. 1 and 2.
Ms R.D. Raskar, Advocate for the Respondent No.5.

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 15, 2019

1. Heard.
2. By the judgment dated 15th December 2007, this Court decided Writ Petition No. 3442 of 2015 and the order passed by the State Government, which was challenged in the writ petition, came to be set aside. The State Government had allowed the revision application filed before it under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the Act of 1960). This Court recorded that the revision application filed before the State Government under Section 154 of the Act of 1960 was not maintainable.

In the revision application which was filed before the State Government, report of the enquiry under Section 83 of the Act of 1960 was challenged. This Court held that the report under Section 83 of the Act of 1960 cannot be said to be either an "order" or "decision" for the purposes of Section 154 of the Act of 1960 and therefore, the revision application was not maintainable.

3. Now, the respondent Nos. 4 to 11 and 13 to 19 have filed this application seeking review of the judgment passed in Writ Petition No.3442 of 2015 on 15th December 2017. According to the respondent Nos. 4 to 11 and 13 to 19, the order passed by the Divisional Joint Registrar, Co-operative Societies on 19th December 2008 directing that enquiry under Section 83 of the Act of 1960 should be conducted was also challenged. According to the respondent Nos. 4 to 11 and 13 to 19, revision under Section 154 of the Act of 1960 lies against such order directing enquiry. It is submitted that as this relevant fact was not brought to the notice of the Court while deciding the petition, it is held that the revision filed before the State Government under Section 154 of the Act of 1960 was not maintainable. It is submitted that there is an error apparent on the face of record and therefore review of the judgment passed in Writ Petition No.3442 of 2015 on 15th December 2017 is necessitated.

4. The learned Senior Advocate appearing for the Original respondent Nos. 4 to 11 and 13 to 19 has submitted that the misconception of fact by Court or even by an Advocate would amount to “sufficient reason” to entertain and allow review application under Order 47 Rule 1 of the Code of Civil Procedure. To support the submission, reliance is placed on the judgment given in the case of *BCCI vs Netaji Cricket Club*, reported in **(2005) 4 SCC 741**.

Relying on the judgment given in the case of *Medical Council of India vs. Christian Medical College*, reported in **(2016)4 SCC 342**, learned Senior Advocate has submitted that while considering the Review Application, the Court has to

examine whether any relevant fact or question of law remained to be examined by the Court because of which an error has crept in the judgment of which review is sought.

5. It is submitted that the averments in Para No.3 of the memorandum of Revision which was filed before the State Government show that the order passed by the Divisional Joint Registrar on 19th December 2008 directing inquiry be conducted under Section 83 of the Act of 1960 was challenged. It is argued that only because the prayer seeking quashing of the order dated 19th December 2008 was not made in the Memorandum of Revision, it cannot be said that the order dated 19th December 2008 was not challenged before the State Government. And it being so, the conclusions of this Court that the Revision application filed before the State Government was not maintainable, are not sustainable. It is submitted that the State Government, while exercising jurisdiction under Section 154 of the Act of 1960 should have examined the legality of the order passed by the Divisional Joint Registrar on 19th December 2008.

To support the submission that even if there was no prayer in the Memorandum of Revision to set aside the order dated 19th December 2008, considering the averments in the body of the Memorandum of Revision and the challenges raised in the Memorandum of Revision, the State Government should have exercised its revisional jurisdiction to examine the legality of the order dated 19th December 2008, reliance is placed on the judgment given in the case of *Godrej Sara Lee Ltd. vs Commr. (AA)*, reported in **(2009)14 SCC 338** and the judgment given in the case of *Dharampal Arora V/s Punjab State Electricity Board*, reported in **(2006)13 SCC 593**.

In the judgment given in the case of *Godrej Sara Lee Ltd. (supra)*, the Hon'ble Supreme Court, in the facts of that case, held that the notification issued by the State of Kerala enhancing the taxable rate of Mosquito repellents was questioned as illegal and *ultra vires* the Kerala Value Added Tax Act, 2003 and therefore, the High Court should have exercised jurisdiction under Article 226 of the Constitution of India and should not have relegated the parties to alternate remedy before the statutory authority.

In the case of *Dharampal Arora (supra)*, the point which had arisen was whether the party was entitled for consequential relief though not prayed for if substantial relief was granted, and it was held that if substantial relief was granted, the party was entitled for the consequential reliefs even if the party failed to pray for the consequential reliefs.

The proposition laid down in the above referred judgments is well settled. However, the above referred judgments do not assist the respondent Nos. 4 to 11 and 13 to 19 as in the facts of the present case it cannot be said that the order passed by the Divisional Joint Registrar on 19th December 2008 was challenged in the revision application which was filed before the State Government.

6. In the Memorandum of Revision, only an averment is found that the order dated 19th December 2008 was illegal and unsustainable. The Memorandum of Revision which was filed before the State Government does not show that there was any challenge to the order passed by the Divisional Joint Registrar on 19th December 2008.

The opening paragraph of the Memorandum of Revision which was filed before the State Government is as follows:

“Being aggrieved by an enquiry report to the issue Nos.1 to 3, 5, 6, 9 and 10 submitted by the respondent No.2 u/sec. 83 of M.C.S. Act on dated 05/06/2012 and 07/06/2012 to the respondent No.1 which is received by the petitioners on 04/11/2012 from the respondent No.3 Bank, the petitioners prefer the present revision on the following facts and grounds amongst others:-”

The prayers which were made in the Memorandum of Revision were as follows:

*“a) Call for and examine the record from the file of respondent No.1 and 2 and further be pleased to quash and set aside the enquiry report submitted by the respondent No.2 u/sec. 83 of the Act of the extent of issue No.1 to 3,5,6,9 and 10 in the interest of justice and equity.
b) To grant any relief in the circumstances of the case deems fit.”*

In the above facts, it cannot be accepted that the order passed by the Divisional Joint Registrar on 19th December 2008 was challenged before the State Government.

7. There is another aspect. Section 154(3) of the Act of 1960 lays down limitation for filing Revision application. It is provided that the Revision application shall not be entertained if filed after two months of the date of communication of the decision or the order. The provisions of sub-section 3 of Section 154 of the Act of 1960 empowers the State Government to condone the delay, if sufficient cause is shown. In the present case, the Memorandum of Revision was filed before the State Government in November 2012. Obviously, the limitation for

filing the Revision Application against the order dated 19th December 2008 had expired. Admittedly, the applicants in the Revision Application had not filed any application praying for condonation of delay. Considering the facts of the case, I find that the decision of not challenging the order dated 19th December 2008 in the Revision Application was a conscious decision of the applicants before the State Government and /or their Advocates.

8. In the above facts, it cannot be said that there is any error apparent on the face of the record or any relevant fact/aspect is not considered, which necessitates review of the judgment given in Writ Petition No. 3442 of 2015 on 15th December 2017. I see no reason to exercise the review jurisdiction.

The Miscellaneous Civil Application is **dismissed**.
In the circumstances, the parties to bear their own costs.

JUDGE

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