

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL APPLICATION (REVIEW) NO.14 OF 2019
IN
MISC. CIVIL APPLICATION NO.743 OF 2018
IN
FIRST APPEAL NO.72 OF 2016

AND

CIVIL APPLICATION (REVIEW) NO.15 OF 2019
IN
MISC. CIVIL APPLICATION NO.742 OF 2018
IN
FIRST APPEAL NO. 72 OF 2016

Smt. Parvati Madeva Gaonkar and another son of Abdul Bapari and others	...	Applicants (Appellants to the First Appeal)
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Versus

Smt. Asha Maharudra Naik ... Gaonkar and others	Respondents.
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Shri Shabhu Sinai Kakodkar, Advocate for the applicant.

Shri Vishwadh Sardessai, Additional Government Advocate
for the respondent no.3.

Shri Ryan Menezes, Advocate for the respondent no.4.

Ms. A. Fernandes, Advocate for the respondent no.5(c)(1).

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 2nd March, 2020.

Pronounced on: 6th March, 2020.

ORDER:

The applicants seek a review of an order passed by this Court dated 22/03/2019 pursuant to which the application for the condonation of delay was dismissed and as a corollary thereto the application to bring the legal heirs of the deceased respondent no.5(c) was also dismissed.

2. Heard Shri Shambhu Sinai Kakodkar, learned Advocate on behalf of the applicant who submitted at the outset that the grounds nos.1 and 2 of the review application could be allowed as they were typographical errors which were apparent on the face of the record and in respect of which the learned Advocates for the respondents had no objection. It was his contention next that there was an error apparent on the face of the record in concluding that nowhere the source of information was spelt out

through whom the applicants learnt about the legal heirs of the deceased respondent no.5(c) in paragraph 14 of the impugned order when paragraph nos.5 and 6 of the application clearly spelt out the source of information of the applicants. There was a mistake or error apparent on the face of the record in paragraph 14 of the impugned order inasmuch as the applicant had not made out sufficient cause for condoning the delay and that the respondent no.5(c) was survived by N number of legal representatives. The contents of the application clearly spelt out sufficient cause and besides that, MCA N.742 of 2018 clearly spelt out the legal representatives of the deceased respondent no.5(c). The conclusion drawn by this Court was contrary to the judgment in **Esha Bhattacharjee v/s. Managing Committee of Ragunathpur Nafar Academy and ors** [(2013) 12 SCC 649] and **Collector Land Acquisition Anantnag and another v/s. Mst. Katiji & ors** [AIR 1987 SC 1353].

3. Shri Sinai Kakodkar, learned Advocate further contended that there was an error apparent on the face of the record in paragraphs 39 and 40 of the impugned order in concluding that there was collusion between the plaintiff with the defendant no.1 and the respondent no.5(a) and that the husband of the defendant no.1 had deposed in favour of the plaintiffs. It was unbelievable that the applicants/plaintiffs had no nexus with the respondent no.1/5(a) and that they had no knowledge of the death in the face of the collusion between them. The findings of the Trial Court were challenged in the First Appeal and the contesting respondent had not set out a case of any collusion in their reply. There was no evidence that the applicants had knowledge of the death of the respondent no.5(c) from any source. This Court while entertaining the application for the condonation of delay ought not to have gone into the merits of the Appeal and hence, there was an error apparent on the face of the record, to review the impugned order.

4. Shri Shambhu Sinai Kakodkar, learned Advocate for the applicant further submitted that there was an error apparent on the face of record in paragraph 40 of the impugned order inasmuch as the respondent no.5(c) had expired in February,2005 and there was ample opportunity to the applicants to know in the year 2010 and 2013 at the time of service at each stage that the respondent no.5(c) had expired. The Lower Court record had been called by this Court in First Appeal which was in continuation of the original Trial Court proceedings and forming a part of the appeal did not disclose the death or any service report or the evidence on record that the respondent no.5(c) had expired in 2005 and that the applicant had knowledge about his death at any time prior to the dates as stated in the application. The contents of the application for the condonation of delay disclosed sufficient cause and to be arrived at from the case set out and there was an error by this Court in concluding that the applicant was lackadaisical and casual and that no leniency was required to be shown

in the matter. The impugned order was fraught with errors apparent on the face of the record and the impugned order was therefore liable to be reviewed.

5. Shri Ryan Menezes, learned Advocate for the respondent no.4 conceded that the grounds urged at serial nos.1 and 2 could be allowed as they were mere typographical errors in the findings recorded by this Court. Insofar as the ground no.3 was concerned, he adverted to the Paragraph 5 of the application and submitted further that the scope of review jurisdiction was restricted and in that regard placed reliance on **Meera Bhanja v/s. Nirmala Kumari Choudhary** [(1995)1 SCC 170] and **M/s. Tungabhadra Industries Ltd. V/s. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur** [AIR 1964 SC 1372]. Insofar as the ground 4 of his application was concerned, he contended that the principles for the condonation of delay were correctly applied by this Court and there were no errors in the

reasoning recorded by this Court which findings were borne from the records. The ground no.6 urged on behalf of the applicant was not an error apparent on the face of the record and therefore, the review application which was in the nature of an appeal could not be allowed.

6. Shri Vishwadh Sardessai, learned Additional Government Advocate for the respondent no.3 adopted the arguments of Shri Ryan Menezes, learned Advocate and submitted that there were no pleadings at the instance of the applicant to substantiate his case and to buttress a plea that there was an error apparent on the face of record. The application was thus liable for dismissal with costs.

7. Ms. A. Fernandes, learned Advocate for the legal representatives of the respondent no.5 submitted that there was ample discussion by this Court while passing the order under review. There was a delay of 13 years in bringing the legal representatives on record which was unexplained and no error was spelt out on the face of the record. The application as such was liable for dismissal.

8. In **M/s.Thungabhadra Industries** (supra), the Hon'ble Apex Court brought about a distinction from a mere erroneous decision to an error apparent on the face of the record and observed that this distinction was real, though it might not always be capable of exposition between a mere erroneous decision and a decision which could be characterised as vitiated by “error apparent”. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate arguments one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

9. In **Meera Bhanja**(supra), the Hon'ble Apex Court held that the approach of the Division Bench dealing with the review proceedings clearly showed that it had overstepped its jurisdiction under Order XLVII, Rule 1 CPC

by merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error or error apparent in view of the settled legal position. An error apparent on the face of the record means an error which strikes one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.

10. At the outset, the typographical error at paragraph 6 of the order under review is required to be corrected where the reference has been made to the year of mortgage in the year 2002 instead of 1978 and the same shall read as "1978". So also in same paragraph 6 the line 2 from the foot of the page has to be read as attached by the respondent no.2 instead of the respondent no.3 and sold in favour of the respondent no.4. The reference by Shri Shambhu Sinai Kakodkar, learned Advocate to grounds 3 and 4 of his application is not at all tenable inasmuch as a roving enquiry has to be made in the application and to co-

relate that paragraphs 4 and 5 of the MCA No.743/2018 had to be read in conjunction with paragraph 6. If that be so nothing ought to have prevented the applicant from taking the contents of paragraph 6 in continuity with the contents of paragraph 5. It is only as an afterthought that the applicant seeks to read the contents of paragraph 6 into paragraphs 4 and 5 of the said application. These grounds too are not available to the applicant to canvass that there was an error apparent on the face of the record which required correction by this Court. Insofar as the next ground urged on his behalf on the point of collusion, it was clearly spelt out on behalf of the respondents that there was collusion between the parties and the respondent No.1/5(a) and which was amply demonstrated from the evidence brought on record. It is not available to the applicant to now canvas that the aspect of collusion should not be considered at the stage of condonation of delay but while deciding the appeal on merits.

11. The next ground urged on his behalf about the error apparent on the face of the record vis-a-vis the death of the respondent no.5(c) in February,2005 and opportunity to the applicants to know in the year 2010 and 2013 at the time of service at each stage cannot be said to be an erroneous finding by this Court. It was on the basis of the statements made by the parties and all documents on the record that such a finding was recorded and it cannot be heard on behalf of the applicant that it was an error apparent on the face of the record. There is no dispute with his last contention that the sufficient cause could be gathered from the application but on that premise it cannot be heard that sufficient cause was shown by the applicant in the condonation of delay and bringing the legal representatives on record. There is no dispute with the proposition culled out in **Ramdas Naik** (supra) that the Judges' record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else. The reliance on this judgment nowhere

buttresses the case of the applicant that he is entitled to seek the review of the order under challenge nor is it available to him to canvass that the ratio in **Esha Bhattacharya**(supra) has not been considered by this Court.

12. The scope of review in terms of Order XLVII Rule 1 CPC is limited and it must be confined to an error apparent on the face of the record. The error must be such as held in **Meera Bhanja** and **Tungabhadra**(supra) as would be apparent on mere looking of the record without requiring any long-drawn process of reasoning. Reappraisal of the entire evidence on record for finding the error would amount to an exercise of the appellate jurisdiction which is not permissible. The review proceedings are not by way of an appeal and have to be strictly confined to the scope of Order XLVII Rule 1 CPC. The review petition can be entertained only on the ground of an error apparent on the face of record and not on any other ground. An error apparent on the face of record must be such an error which

must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. In the circumstances, therefore, no case whatsoever is made out for a review of the order under consideration and in view thereof the applications stand dismissed.

NUTAN D. SARDESSAI, J.

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