

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO. 178 OF 2020
IN
WRIT PETITION NO. 9362 OF 2014**

Omkar Chavdas Bhortakke

Deceased through LR.s.

1-A) Smt. Nalini Pundlik Choudhary & others ... Applicants

Versus

Smt Papilabai Baburao Patil and others Respondents

....

Mr. Sanket S. Kulkarni, Advocate for the applicants

Mr. S. B. Deshpande, Advocate h/f Mr. A. G. Talhar, Advocate for
respondent No.1

Respondent Nos. 2A to 5 are formal parties

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 21st JANUARY, 2021

PRONOUNCED ON : 23rd FEBRUARY, 2021

PER COURT :-

. Heard.

2. The applicants hereby seek review of the judgment and
order dated 27.01.2020, dismissing writ petition No.9362 of 2014.

3. Facts:-

Land bearing Gat No.116 was the subject matter of the
writ petition (for short "writ land"). Hari Vithoba Chaudhary

(deceased) was owner of the writ land. He had mortgaged it to Dattatraya Kulkarni on 16.04.1941. Dattatraya inducted Chavadas Bhortakke as tenant in the writ land. Dattatraya passed away in February 1957, leaving behind his widow Durgabai. Respondent No.1 Papilabai (legal heir of late Hari Chaudhary) had filed a suit, being Regular Civil Suit No.127 of 1977 for redemption of the mortgage. The suit was compromised. Respondent No.1 - Papilabai, thereafter preferred Tenancy Application No.117 of 1978 to the Tahsildar-cum Agricultural Lands Tribunal (A.L.T.) for declaration that Chavadas was not a tenant of the writ land. In the alternative, she had prayed for grant of certificate under Section 88-C of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "B.T. & A.L. Act") in the event if Chavadas is declared to be tenant. On 28.06.1980, respondent No.1 was granted certificate under Section 88-C of the B.T. & A.L. Act.

Legal representatives of Chavadas filed Tenancy Appeal No.19 of 1980 before the Sub Divisional Officer, Bhusawal against the order granting certificate under Section 88-C. Respondent No.1 also preferred appeal against the order declining to grant declaration that Chavadas was not a tenant. The Sub Divisional Officer dismissed both the appeals by common judgment and order dated

26.02.1985. The order granting 88-C certificate was confirmed by the High Court in Writ Petition No.3045 of 1985. Respondent No.1 had preferred Tenancy Revision Application No.166 of 1985 before the Maharashtra Revenue Tribunal (M.R.T.) against the decision declining to grant declaratory relief. In 1991, the said revision was allowed by the M.R.T., setting aside the order of the Tahsildar-cum-A.L.T., and S.D.O., Bhusawal. The M.R.T. held that Chavadas was not a tenant of the writ land. Writ petition No. 184 of 1992 filed against the order passed by the M.R.T., was allowed by this Court. Civil Revision Application No.329 of 1995 was also preferred by the petitioners, which was allowed by this Court. Both the orders passed in Civil Revision Application No.329 of 1995 and Writ Petition No.184 of 1992, were unsuccessfully challenged before the Supreme Court in Civil Appeal No.800-804 of 2000.

4. Shri Sanket S. Kulkarni, learned Advocate for the petitioners would submit that the judgment and order was passed long after the writ petition was finally heard at admission stage (i.e. heard on 09.09.2019). The judgment was delivered on 27.01.2020 and the same was uploaded on 25.02.2020. It violated provisions of Order 20 Rule 1 of the Code of Civil Procedure. Relying on the

judgment of the Supreme Court in the case of *Anil Rai vs. State of Bihar – MANU/SC/1586/2001*, learned Advocate submitted that the delay in pronouncing the judgment itself gives a cause of action to claim review thereof. Turning to the merits of the matter, learned Advocate would submit that it was essentially a question of interpretation of Section 33B of the B.T. & A.L. Act. A ground in that regard had specifically been raised in the writ petition. The said point has not at all been considered. The same constitutes an error apparent on the face of record and forms sufficient ground for reviewing the order. According to the learned Advocate, literal interpretation of Section 33B would suggest that landlord ought to have given a notice within three months from the date of receipt of 88C certificate. Since all the dates required to be taken into consideration, were before the Court, issue of limitation could have been decided in the writ petition. Under Section 33B(5) of the B.T. & A.L. Act, equalisation of land between landlord and tenant is required to be done while granting relief under Section 33B r/w Section 29. The object behind the same is that neither of them should be rendered landless. B.T. & A.L. Act is tenant beneficial legislation. Its purpose would, otherwise, be frustrated. According to him, the finding recorded in para 18 of the judgment is a mistake. It

can very well be considered for review. The position of law demonstrated by the petitioner by way of Full Bench judgment in case of *Devidas Narayan More vs Chunilal Bhailal Wani & ors* AIR 1973 Bom 195, the certificate granted under section 88C itself was illegal and without jurisdiction, merely because the correct position of law was not cited, the certificate does not become legal, it will be always and null and void document. Learned Advocate relied on following authorities:

- (i) *Board of Control for Cricket India vs. Netaji Cricket Club – (2005) 4 SCC 741*
- (ii) *Bhagwandas Fatechand Daswani vs. HPA International – (2000) 2 SCC 13*
- (iii) *Prasad Zumbarlal Firodiya vs. Jayashri Rambhau Shelke – Writ Petition No.2112 of 2020*
- (iv) *Rambhau Ganpat Sutar vs. Tatyaba Patole – 1964 MhLJ 184*

5. Shri S. B. Deshpande, learned Advocate for the respondents, would on the other hand, submit that application for review is not maintainable. Relying on judgments of the Supreme Court and this Court, the learned Advocate would submit that it is well settled that the parties are not entitled to seek review of a judgment merely for the purpose of rehearing and fresh decision of the case. Normal principle is that a judgment pronounced by the

Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. The learned Advocate relied on the following authorities:

- (i) *Suman Dattatraya Kadam vs. Shobha Kailas Bonekar – Civil Application No.26 of 2007 in Writ Petition No.721 of 2006;*
- (ii) *Chandra Kante and Ors. vs. Sheikh Habia – MANU/SC/0064/1975;*
- (iii) *Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma and Ors. - MANU/SC/0004/1979;*
- (iv) *Meera Bhanja vs. Nirmala Kumari Choudhary – MANU/SC/0098/1995;*
- (v) *Kamlesh Verma vs. Mayawati and Ors – MANU/SC/0810/2013.*

6. Section 114 of the Code of Civil Procedure, reads as under:

“114. Review – Subject as aforesaid, any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passes the decree or made the order, and the Court may make such order thereon as it thinks fit.”

7. Order 47 Rule 1 of the Code of Civil Procedure, reads as under:

“1. Application for review of judgment - (1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of 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 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, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation.-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]”

8. The Apex Court in the case of ***Kamlesh Verma (supra)*** gave a summary of the principles as under:

“16. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

*The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki and approved by this Court in **Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius** to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in **Union of India v. Sandur Manganese & Iron Ores Ltd. and Ors.***

(B) When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error. “

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

9. Keeping in mind the aforesaid principles, let us consider the claim of the petitioners.

The review of the judgment is sought on the ground of delay in delivering it. Order 20 Rule 1 CPC has been relied on :

“Judgment when pronounced - (1) The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or, as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders :

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day

beyond sixty days from the date on which the hearing of case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.”

10. In the case of **Anil Rai (supra)** the Apex Court issued some instructions in this regard. Two of them are reproduced below.

“(iv) Where a judgment is not pronounced within three months from the date of reserving judgment any of the parties in the case is permitted to file an application in the High Court with prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.

(v) If the judgment, for any reason, is not pronounced within a period of six months any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances.”

11. Recently, the Apex Court in case of SJVNL vs. M/S CCC HIM JV & Anr. (Petition for Special Leave to Appeal (C) No. 287/2021, decided on 12.02.2021 has observed thus:

“..... A reading of our judgment in Anil Rai vs. State of Bihar, (2001) 7 SCC 318 and, para 9 in particular, makes it clear that Order 20 of the CPC does not apply to the High Court. In fact, para 10 then goes on to lay down a series of guidelines which ought to be imposed for the High Court in which, inter alia, it is mentioned that only after six months hiatus between reserving a judgment and delivering it, either party can move an application to the Chief Justice of the High Court, who may then decide that the matter be heard afresh. No such application has been presented in the present case. As a matter of fact, an MA

was presented by one of the parties after judgment was reserved to modify the status quo order, and an MA was moved by the other party so as to pass no orders as judgment is reserved.”

The applicants herein did not take recourse to guideline No.(v) in ***Anil Rai’s case (supra)***.

The delay in delivering the judgment or order cannot itself be a ground to seek review under Order 47 Rule 1 CPC.

12. So far as ground No.IV, which pertains to interpretation of Section 33B of the B.T. & A.L. Act is concerned, this Court had already come to the conclusion. Ground No.IV reads thus:

“IV) It is necessary to consider that, section 33 B of the Bombay Tenancy and Agricultural Lands Act 1948, if read in a plain and simple manner as required by the settled principles of interpretation of statutes, no other interpretation is deducible and the landlord ought to have given notice within date of receipt of 88C certificate. As it is well settled principle of law that “legislature is never short of words”, and if it had any other intent then it would have stated so in the section.”

This Court already answered this ground vide the reasons enumerated in paragraphs No.9 to 13 of the judgment under review. If the petitioners are not satisfied therewith, they have a remedy of appeal. The judgment delivered by this Court may be wrong. Learned counsel for the applicants meant to say that the

application under Section 33B(1) of the B.T. & A.L. Act, ought to have been preferred within three months from the date of decision of the Mamlatdar to issue certificate under Section 88C (4) of the B.T. & A.L. Act. In support of his contentions and as regards interpretation of Section 33B of the B.T. & A.L. Act is concerned, the petitioner again relied on the judgment of this Court in the case of *Devidas Narayan More (supra)*. As per Section 33B (3), notice required to be given under sub-section (1), shall be served on the tenant before the first day of January 1962. So has not happened in this case. If an application under Section 88C is undisposed of and pending on that date then within three months of his receiving such certificate, and a copy of the notice shall, at the same time, be sent to the Mamlatdar. Whether application under Section 88C was undisposed or not, was a question of fact. Before all the three authorities below, the said fact had never been agitated. In para 15 of the judgment, this Court has answered the point raised. Even proviso of sub-section (4) is an exception to Section 33B(3) of the B.T. & A.L. Act.

13. This Court has already observed that appeal against the order granting 88C certificate had been filed by the petitioners.

There was nothing on record to show that there was no stay of the order granting 88C certificate. Again it is to be stated here that this reasoning if not correct, the applicant has remedy of appeal, and not review.

I have already held that the issue of limitation was a mixed question of fact and law. The same cannot be decided in writ petition.

14. Learned Advocate for the applicants relying on the judgment of Full Bench of this Court in the case of ***Devidas Narayan More (supra)*** submitted that the certificate does not become legal, merely because the correct position of law was not cited. This submission of the learned Advocate has been answered in paragraph 15 of the judgment.

15. It is true that ground No.II in the writ petition pertains to clause (5) of Section 33B of the B.T. & A.L. Act. Under the said provision, the right of a certificated landlord to terminate a tenancy under Section 33B is subject to the following conditions.

“(a) If any land is left over from a tenancy in respect of which other land has already been resumed by the landlord or his predecessor-in-title, on the ground that other land was required for cultivating it personally under section 31 (or under any earlier law relating to tenancies then in force), the tenancy in respect of any land so left

over shall not be liable to be terminated under sub-section (1).

(b) The landlord shall be entitled to terminate a tenancy and take possession of the land leased but to the extent only of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation—the area resumed or the area left with the tenant being a fragment, notwithstanding, and notwithstanding anything contained in section 31 of the Bombay Presentation of Fragmentation and Consolidation of Holdings Act, 1947.

(c) The land leased stands in the Record of Rights (or in any public record or similar revenue record) on the 1st day of January, 1952 and thereafter until the commencement date in the name of the landlord himself, or of any of this ancestors (but not of any person from whom title is derived by assignment or Court sale or otherwise) or if the landlord is a member of a joint family, in the name of a member of such family.”

16. In support of his contention, learned Advocate has relied on a judgment of this Court in the case of ***Rambhau Sutar (supra)***. This judgment was not cited while the writ petition was heard. Although it was one of the grounds in the writ petition, it was not argued. Moreover, if we consider the aforesaid clauses (a) to (c) of Section 33B (5) of the B.T. & A.L. Act, the same would indicate that it was a question of fact. The same ought to have been raised first before the A.L.T., if not, at least before the Sub Divisional Officer. This issue has been raised before this Court for the first time. If any ground raised and the same has not been answered in the judgment,

it shall be deemed to have been rejected. The remedy thereagainst would be in the nature of appeal or otherwise, but before the higher forum. The same cannot constitute a ground for review.

17. According to me, the grounds raised in this review application may be good grounds for appeal. The applicants have failed to make out the case for review of the judgment. The application, therefore, fails. The same is thus, dismissed.

[R. G. AVACHAT, J.]

LATER ON:

Pending the writ petition, there was interim relief. The same to continue for three weeks.

[R. G. AVACHAT, J.]

SMS