

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5611 OF 2021
in
REVIEW APPLICATION (CIVIL) NO.147/2020
IN
SECOND APPEAL NO.171 OF 2019

. Shivanand s/o Kalyanappa Solshe = **APPLICANT**

VERSUS

1. Prashant s/o Shivaji Survase
and others = **RESPONDENTS**

Mrs.Surekha G.Chincholkar, Advocate for Applicant;

Mr. PK Deshmukh, Advocate for Resp.Nos.1 to 5.

CORAM : SMT.VIBHA KANKANWADI, J.

RESERVED ON : 24/06/2021

PRONOUNCED ON : 03/07/2021

PER COURT :-

1. By this application, the applicant is
praying thus, -

"a. This Civil Application may be
allowed.

b. This Hon'ble Court may kindly take on
record my oral submissions on record at
A,B, and C in paragraph 2 of this Civil
application in judgment and order dated
8.6.2021 in Review Application
No.147/2020 that are -

A) The notice dated 17.1.2017 is
issued by the Department of Land
Records through the Deputy
Superintendent of Land Records,

(2)

Tuljapur and is received by the applicant on 25.1.2017 and immediately on 7.2.2017 i.e. within 15 days of knowledge the petitioner had taken steps to file proceedings against the exparte judgment.

B) The ground of receiving notice dated 17.1.2017 on 25.1.2017 and immediately filing Appeal in the District Court along with the delay condonation of 3 years 7 months and 21 days as not mentioned in the delay condonation application, the Hon'ble Apex Court has given liberty to file Review.

C) The petitioner would not gain anything by not remaining present as he has purchased immovable property by paying consideration amount and may not be penalized unheard in the suit."

2. Heard learned Advocate Mrs. Chincholkar for review petitioner-applicant and learned Advocate Mr. PK Deshmukh for Respondent Nos.1 to 5. In order to cut short it can be stated that both of them have made submissions in support of their respective contentions.

3. It is to be noted that initially Second Appeal No.171/2019 was dismissed by this Court by order dated 13th March, 2019. Thereafter, the present applicant approached the Hon'ble Apex Court by filing Special Leave to Appeal (C) No.12966 of

(3)

2019. It was withdrawn by the present applicant on 2nd August, 2019 with liberty to file a Review Application. Accordingly, the applicant had filed Review Application No.147/2020. It was heard on 16th February, 2021 and the order was pronounced on 8th June, 2021 and the said Review Application has been dismissed/rejected. In spite of this long period, that was available to the learned Advocate for the applicant to even file written submissions, there was no attempt on his part. Whatever points were argued by the learned Advocate for the applicant were considered by this Court. Now, after pronouncement of the order passed in the Review Application, present application has been filed to record the oral submissions in the Order which is already passed by this Court on 8th June, 2021. Such procedure is not at all contemplated under Code of Civil Procedure or even by the principles of natural justice.

4. The learned Advocate for the applicant does not say that proper opportunity was not given to her to make all the submissions. In fact, she was heard at length. The ground that has been given for filing this application is that the

learned Advocate was at remote place when the Order was pronounced on line and she was not well. She came to Aurangabad on 11.6.2021 and then she filed the application.

5. As aforesaid, all the documents were duly considered by this Court and the record that was placed. Even at the time of hearing the Second Appeal, this Court had come to the conclusion that no substantial questions of law are arising and, therefore, they were not framed also and to support this contention that when substantial questions of law are not pointed out by the appellant, then High Court is not obliged to frame such substantial questions of law. We can lay hand on the recent decision by Three-Judges Bench of Hon'ble Supreme Court in the case of Kirpa Ram (Deceased) Through L.Rs. And Ors. Vs. Surendra Deo Gaur and Ors. - (2021) 3 Mah.L.J. 250, wherein it is observed that, - "High Court is not obliged to frame substantial question of law when it finds no error in findings recorded by the First Appellate Court. Formulation or reformulation of the same in terms of the proviso arises only if there are some question of law and not otherwise."

6. Therefore, when all the questions involved in the matter, as to whether the Review Application is maintainable or not and whether it can be considered or not, are also dealt with and proper opportunity was given to the applicant; now, there is no question of recording the oral submissions of the learned Advocate for the applicant after the order is pronounced. Further, after pronouncement of the order, the position of this Court would be *functus officio*, as regards the consideration of oral submissions, those ought to have been made and, therefore, this application devoid of merits much less involving any kind of legal point, stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV