

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO.248 OF 2019
IN FAST/2850/2017

SUNIL EKNATH BAJAJ AND OTHERS
VERSUS
MAHESHWARI SEVA TRUST, AURANGABAD AND OTHERS

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Mr. P.G. Godhamgaonkar & Mr. V.V. Bhavthankar, Advocates for applicants
Mr. A.S. Bajaj, Advocate for respondent Nos.2, 3, 8, 9, 10, 11, 14, 17, 19, 26
and 30

Mr. Y.G. Somani, Advocate for the respondent No.21

Mr. B.N. Patil, Advocate for the respondent No.23

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 17th JUNE, 2021

PRONOUNCED ON : 08th JULY, 2021.

ORDER :

1 Present review application has been filed by the original appellants in First Appeal No.2850 of 2017 for review/recall of the judgment/order passed by this Court in the said First Appeal on 16.09.2019, which came to be uploaded on 19.10.2019. This application has been filed under Section 114 read with Order XLVII Rule 1 of the Code of Civil

Procedure, 1908.

2 Heard learned Advocate Mr. P.G. Godhamgaonkar for the applicants, learned Advocate Mr. A.S. Bajaj, for respondent Nos.2, 3, 8 to 11, 14, 17, 19, 26 and 30, learned Advocate Mr. Y.G. Somani, for the respondent No.21 and learned Advocate Mr. B.N. Patil, for respondent No.23.

3 It has been vehemently submitted on behalf of the applicants that there is error apparent on the face of the record in this case, as certain facts were not considered by this Court when the said First Appeal was decided. The First Appeal was filed to challenge the Judgment and order in M.A.R.J.I. No.434/2013 by learned District Judge-13, Aurangabad on 17.06.2017. The said application was filed before the learned District Judge for condonation of delay in preferring appeal against the order passed by learned Deputy Charity Commissioner, Aurangabad in Inquiry No.25/2013 dated 29.05.2013. After appreciation of evidence, the learned District Judge had rejected the application for condonation of delay. This Court in First Appeal after hearing both sides found no fault in the order passed by the learned District Judge, and therefore, the First Appeal came to be rejected.

4 Learned Advocate for the review applicants has vehemently submitted after giving the facts of the case which have been reiterated in the

application that though the applicants were not the members of the Trust in strict sense but they had given amount of Rs.51,000/- each towards membership, which they had deposited by way of cheque in the account of the Trust, and therefore, they were the members; yet, the learned District Judge had come to the conclusion that applicants being not the members of the Trust had no locus standi to file appeal. The District Court as well as this Court had not considered that the Trust was created for the welfare of the Maheshwari community and in clause No.5(B) of the original Trust Deed, it was specifically stated that the activities of the Trust were from Maheshwari community only. The applicants are from the same community. In fact, this Court referred the merits of the case, which should not have been taken into consideration the fact that the First Appeal was challenging the order of rejection of the application for condonation of delay. This Court failed to consider the objective satisfaction test. The Hon'ble Apex Court in **Jnanedaya Yogam and another vs. K.K. Pankajakshy and others**, AIR 1999 SC 3891 and **Baldev Raj Chadha vs. Union of India and others**, AIR 1980 SC 70, it has been held that the quasi judicial authority must form opinion not subjectively but objectively with sufficient bona fides to sustain public interest. In fact, the provisions of the Bombay Public Trust Act (now Maharashtra Public Trust Act) especially Section 72 do not prescribe that the aggrieved member should be the member of the Trust. There was absolutely no provision in the Trust

Deed to reject the membership to a person from Maheshwari community. Therefore, there was no question of showing locus standing for the applicants to challenge the order passed by the learned Deputy Charity Commissioner. If we consider the action taken by the respondents, then they were compromising with the property rights of the Trust. They were not taking steps to preserve the Trust property, which was inclusive of 72000 sq.ft. area in Chikalthana M.I.D.C., Aurangabad. There were other points, which the applicants intended to submit in their First Appeal or in the appeal that was to be preferred against the order of the Deputy Charity Commissioner. However, the learned District Judge rejected the application on the ground of locus standi also.

5 Mr. P.G. Godhamgaonkar relied on the decision in **Board of Control for Cricket, India and another vs. Netaji Cricket Club and others, AIR 2005 SC 592(1)**, wherein it has been held that -

“Section 114 of the Code empowers a Court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the Court except those which are expressly provided in S. 114 of the Code in terms whereof it is empowered to make such order as it thinks fit. Order 47, R.1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece

of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. Thus, a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in O. 47, R.1 of the Code is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit'."

5.1 Further reliance has been placed on the decision in **State of Assam and others vs. Susrita Holdings Pvt. Ltd., 2014 AIR SCW 3084**, wherein it has been held that "when there is matter involving public money, then delay is liable to be condoned".

6 Learned Advocate for the applicants prayed for the review of the order passed by this Court.

7 Learned Advocate Mr. A.S. Bajaj appearing for respondent Nos.2, 3, 8 to 11, 14, 17, 19, 26 and 30 strongly objected the application and submitted that the application has been filed beyond the period of limitation and no separate application for condonation of delay to file review application has been filed, and therefore, on this ground also the application

deserves to be rejected. Further, as regards the review is concerned, it appears that instead of challenging the order passed by this Court before the Apex Court, the present applicants are praying for review, which is not permissible. There is absolutely no error apparent on the face of the record. All the facts were considered by this Court. Taking into consideration the record the learned District Judge had come to the conclusion that the application for condonation of delay was not filed with bona fide intention, and therefore, that fact was also considered by this Court. The applicants were not members of the Trust. They could not have been said to be the beneficiaries in the strict sense, though they are from the same community. This Court as well as District Court have considered as to how the amount was transferred/deposited in the account of the Trust and there was absolutely no submission of prescribed form, that too, adopted by the proper procedure by the applicants and therefore, they could not have been said to be the members of the Trust, who could have been given a right to challenge the scheme. There is absolutely no necessity to take a different view than that has been already taken by this Court. Learned Advocate has placed reliance on the decision in **Inderchand Jain (dead) through L.Rs. vs. Motilal (dead) through L.Rs., (2009) 14 SCC 663**, wherein it has been held that -

“Review is not appeal in disguise. Review Court cannot sit in appeal

over its own order and rehearing of the matter is impermissible in law. Review is exception to general rule that once a judgment is signed or pronounced, it should not be altered. Courts should not invoke their inherent jurisdiction for reviewing any order.”

8 At the outset, as regards the limitation point is concerned, it appears that the present review application is within limitation. Though the order was pronounced by this Court on 16.09.2019, it appears that the same was uploaded on 19.10.2019 and the review application is filed on 13.11.2019. Therefore, knowledge of the reasons in the order will have to be considered and it can be said that the review application is within limitation.

9 As regards the maintainability of the review petition is concerned, though it has been argued that there is error apparent on the face of record of this Court when the First Appeal was decided, however, it has not been pin-pointedly shown, as to which record has not been considered. A detail order has been passed. Entire record, which was before the learned District Judge while deciding M.A.R.J.I. No.434/2013, was considered by this Court. How the applicants had deposited those cheques in the account of the Trust was considered by this Court and as regards the Deed of Trust is concerned, it appears to be not produced by the applicants along with their First Appeal and the clause, which now, the applicants want to invoke or specifically point out, was in fact, pointed out when the submissions in

respect of object of the Trust was submitted. Now, in review application the scope of this Court would be limited, in a sense it has to be considered, as to which record has not been considered by this Court when the First Appeal was decided. What was there on record, though pointed out and there are observations in respect of the said record, then in that case anything by way of challenge to those observations cannot be said to be error on the face of the record. Therefore, in view of **Inderchand Jain's** case (supra) the review cannot be taken as appeal in disguise. This Court had taken a note that there was delay of 45 days in preferring an appeal before the District Court. However, this Court had come to the conclusion that when it has been pointed out from the evidence that the application is not bona fide and reasonable ground has not been shown. It is a settled law that application for condonation of delay should be considered liberally; yet, when it comes to the intention of the party, then, that is also one of the considerations, that is required to be considered, which has been considered.

10 As regards **Baldev Raj Chadha's** case (supra) is concerned, only for the words 'subjective satisfaction, objective and bona fides based on relevant materials' it appears that this decision has been relied. However, when we consider as to how a ratio is to be applied, then we have to consider the facts of the case before the Apex Court, the observations in respect of law

or facts. Those words are used in that case when order of compulsory retirement was challenged. That case cannot be made applicable in the present case.

11 Further, as regards the matter involving public policy is concerned, definitely, it has to be considered from wide angle, but in the present case, the Trust property cannot be equated to public money, because it is the Trust property, over which only the members of the Trust and the beneficiaries have right. Even if we consider the object with it, the Trust was formed and the intention was for the upliftment of members of Maheshwari community; yet, in general, it cannot be made applicable to all those persons from the same community, because the other conditions and requirements of the Trust would then be fulfilled, which includes becoming member of the Trust.

12 Further, the ratio from **Jnanedaya Yogam's** case (supra) relates to the land acquisition proceedings, and therefore, they are not applicable. Only the ratio in **Inderchand Jain's** case (supra) would be applicable here, which lays down under which circumstances a review application should be considered by Courts.

13 The scope of the review petition is required to be considered. In

Vinay Sharma & another vs. State (NCT of Delhi) & others [(2018) 8 SCC 186], it has been observed that "Power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. A repetition of old and overruled argument is not enough to reopen concluded adjudications." Here, in this case, the points which have been raised by the review petitioners can be termed as repetition of old and overruled arguments.

13.1 Further, in **Haryana State Industrial Development Corporation Limited Vs. Mawasi & others [(2012) 7 SCC 200]**, it has been held that "Roving inquiry or *de novo* hearing in guise of review is impermissible." Reliance was placed in this decision on the case **Thungabhadra Industries Ltd. Vs. Govt. of A.P. [AIR 1964 SC 1372]** (Three Judges Bench), wherein it has been observed thus -

"11.... A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument 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."

13.2 Further note was taken in respect of the decision in **Parsion Devi vs. Sumitri Devi [(1997) 8 SCC 715]**, wherein it has been observed thus -

"9. ... An error which is not self- evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. ... A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

13.3 The same ratio is reiterated in **Vikram Singh alias Vicky Walia & another vs. State of Punjab & another [(2017) 8 SCC 518]**, wherein it has been held that "Review cannot be made on those grounds which were already urged during appeal." In this case, the term "an error apparent on the face of the record" has been explained with the help of earlier pronouncement of the Hon'ble Apex Court in **Kamlesh Verma Vs. Mayawati [(2013) 8 SCC 320]**, wherein it was held that "an error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record."

13.4 The ratio laid down in **State of West Bengal & others vs. Kamal Sengupta & another, (2008) 8 SCC 612**, can be taken into account wherein it

has been observed thus -

"21. At this stage, it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of factor law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

14 Thus, taking into consideration the above said legal position, it can be said that the points which have been raised by the review applicants

are not within the ambit of the powers of review, which can be exercised under Section 114 read with Order XLVII of the Code of Civil Procedure, 1908.

15 There is no merit in the present review application and as such, is accordingly dismissed.

(Smt. Vibha Kankanwadi, J.)

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