

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION NO.108 OF 2021 (REVIEW)

IN

WRIT PETITION NO.5287 OF 2017 (D)

WITH

MISC. CIVIL APPLICATION NO.109 OF 2021 (REVIEW)

IN

WRIT PETITION NO.6985 OF 2016 (D)

Padam s/o Roshanlal Ghai and ors.

-vs-

Dr Balasaheb s/o Wasudeorao Motghare

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms P. C. Sood, Advocate for applicants.

CORAM : A. S. CHANDURKAR J.

DATE : February 12, 2021

Perused the review applications and heard the learned counsel for the applicants.

According to the learned counsel for the applicants in the year 1977 the landlord had initiated proceedings under provisions of C.P. and Berar Letting of Houses Rent Control Order 1949 seeking permission to determine the tenancy of the applicants on the ground of bonafide need. It is submitted that in the year 1979 a compromise was entered into between the parties in said proceedings wherein the landlord agreed not to prosecute those proceedings further. According to the learned counsel for the applicants by suppressing this material fact the landlord had misled the Court in passing the decree for eviction.

This fact came to the knowledge of the applicant No.1 after dismissal of the Special Leave Petition.

It is seen that though the applicants were party to the earlier proceedings, this ground was not raised in either of the Courts below nor in the writ petitions. Secondly the present proceedings arise out of the suit for eviction filed under provisions of Maharashtra Rent Control Act, 1999. This suit was filed in the year 2009 which is about thirty years after that compromise in 1979. The aspect of res-judicata would not apply when eviction is sought on the ground of bonafide need. It is also to be noted that the order passed in Writ Petition Nos.5287/2017 and 6985/2016 was not interfered with by the Honourable Supreme Court by dismissing the Special Leave Petition.

In these peculiar facts the ratio of the decisions relied upon by the learned counsel for the applicants in *Pralhad Lalchand Chavan v. Iqbal Hussain Inayat Hussain Badri* AIR 1996 SC 2547, *Ratilal Narbheram v. Welji Nagji* AIR 1975 BoM. 218, *Ramdayal Gulabchand Khandelwal and ors. vs. Mahendra s/o Badrinarayan Khandelwal and ors.* (2009) 2 MH.L.J. 782, *M/s S. V. Kedari and Co. Nagpur and anr. v. Mohammad Ibrahim and ors.* AIR 1988 Bom. 394, *Namdeo Nathujiborkar vs. Prakash Vithalrao Kondawar, Vidharbha (Rent Control) Bhadekaru Sangh Akola and*

anr. vs. State of Maharashtra and anr. And Sharashchandra s/o Shridharrao Malvi v. Govind s/o Bapurao Deshmukh 2018(5) ALL MR 799 as well as the decisions filed alongwith the review applications do not support the contention of the applicants.

Though the review petitions are maintainable despite summary rejection of the Special Leave Petition, I do not find any error apparent on the face of the record to invoke review jurisdiction. The applications are accordingly rejected.

Asmita
Bhandakkar

Digitally signed
by Asmita
Bhandakkar
Date: 2021.02.16
11:43:47 +0530

JUDGE

Asmita