

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 REVIEW APPLICATION NO.111 OF 2021
IN
SECOND APPEAL NO.739 OF 2017

SONAJI DAJI DHOLE (DECEASED) THROUGH LRS
TANABAI W/O SONAJI DHOLE AND OTHERS

VERSUS

MURLIDHAR YESHWANT KULKARNI

...

Mr. A.M. Gholap, Advocate for applicants

Mr. A.B. Kharosekar, Advocate for sole respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 08th SEPTEMBER, 2022.

ORDER :

1 Present review application has been filed by the original appellants under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 for the review of order passed by this Court in Second Appeal No.739 of 2017 on 13.08.2019, whereby the Second Appeal was disposed of as not admitted.

2 Heard learned Advocate Mr. A.M. Gholap for the applicants and

learned Advocate Mr. A.B. Kharosekar for the sole respondent.

3 The review applicants were the original plaintiffs who had filed Regular Civil Suit No.58/2012 (Old Special Civil Suit No.24/2009) before Joint Civil Judge Senior Division, Beed for declaration of ownership and perpetual injunction. The said suit came to be dismissed on 22.04.2014. They challenged the said Judgment and Decree by filing Regular Civil Appeal No.72/2014 before learned Adhoc District Judge-2, Beed. The said appeal came to be dismissed on 11.04.2017 and, therefore, they had approached this Court by way of Second Appeal No.739 of 2017. The said Second Appeal came to be dismissed/not admitted by order dated 13.08.2019.

4 The learned Advocate appearing for the applicants has submitted that this Court while deciding the Second Appeal has committed errors in appreciation of facts, which are apparent on the face of the record. The learned Advocate for the applicants then pointed out the errors of fact which he has enumerated in paragraph No.2 of the review application. He has then also pointed out from the paragraphs of the Judgment of this Court as to how the observations which according to the applicants are wrongly made. It is then also stated that there was no issue regarding limitation framed by both the Courts below; yet, that fact was also considered by this Court and thereby

this Court had committed error in wrongly reckoning the period of limitation from 2001 when the sale deed was registered. In fact, the cause of action arose on 18.02.2009 which was the outcome of the refusal to execute the re-sale deed by accepting the principal loan amount of Rs.1,00,000/-. According to the applicants, it was admitted and pleaded that the sale deed dated 08.08.2001 was executed towards the acceptance of condition to get the loan of Rs.1,00,000/- on 10% interest per annum. The original plaintiff had not come with a case that he was aggrieved by the sale deed and this Court wrongly assumed the same. In fact, the original plaintiff had come to the Court being aggrieved by the refusal of the defendant to execute re-sale deed. He, therefore, submitted that since there are errors apparent on the face of the record, the review application needs to be allowed and the Second Appeal needs to be reheard.

5 Learned Advocate Mr. A.B. Kharosekar for the respondent resisted the review application and submitted that this Court had passed a detailed order. The Courts below were also not with the original plaintiff and in the Second Appeal the plaintiff could have pointed out only the substantial questions of law. This Court after considering all the facts of the case found that no substantial questions of law are arising in this case, as contemplated under Section 100 of the Code of Civil Procedure and, therefore, refused to

admit the Second Appeal. The said detailed order needs no interference.

6 Before we proceed, it is to be noted that after this Court had passed the order on 13.08.2019 in the Second Appeal No.739 of 2017, the present review applicants had approached Hon'ble Supreme Court by filing petition in Special Leave to Appeal No.29301 of 2019. However, the review applicants sought leave to withdraw the petition to enable them to file review application and, therefore, that special leave petition was dismissed as withdrawn.

7 Now, in order to bring the case under Section 114 and Order 47 of the Code of Civil Procedure it will have to be shown by the review applicants that there is error apparent on the face of the record. In **Batuk K. Vyas vs. Surat Borough Municipality and others**, ILR 1953 Bom 191 it has been observed that -

“The mere fact that two views are possible on a question of law does not make the decision of a Tribunal with jurisdiction bad on the ground that it has erred in law and the error is apparent on the face of the record. We have had occasion several times to point out that only that error will be corrected by this Court which is clearly apparent on the face of the record and which does not become apparent only by a process of examination or argument.”

7.1 Further, in **T.C. Basappa vs. T. Nagappa**, 1955 SCR 250 it has

been held by Hon'ble Supreme Court that *such error is an error which is a patent error and not a mere wrong decision.*

It is well settled law that in the exercise of review jurisdiction, the Court cannot re-appreciate the evidence to arrive at a different conclusion. Further, whether that is making such a difference, even if taken that some error is on the fact is considered; yet, whether it ultimately affects the thinking process and can lead to a different conclusion than that has been already drawn can also be the test in such case.

In Kerala State Electricity Board vs. Hitech Electrothermics and Hydropower Ltd. and others, (2005) 6 SCC 651, this Court observed as follows :

“10.In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record.

To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise.”

7.2 Further, in State of **West Bengal and others vs. Kamal Sengupta and another**, (2008) 8 SCC 612, the term ‘mistake or error apparent’ has been explained in following words :

“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 fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision”.

7.3 In **Lily Thomas vs. Union of India and others**, AIR 2000 SUPREME COURT 1650, wherein it has been observed that -

“The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a

statute. The power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practiced. However, the Supreme Court in exercise of its powers under Art. 136 or Art. 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.”

8 Therefore, when in above said Judgments as well as in other catena of Judgments it has been reiterated again and again by Hon’ble Supreme Court that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected; here, the review applicants are asking the same. On the facts of the case even the Courts below had come to the conclusion that the original plaintiff had failed to prove that the transaction between him and the defendant was a money lending transaction and he had taken loan of Rs.1,00,000/- only, which he was supposed to repay together with interest @ 10% per annum and also that the defendant had agreed to cancel the sale deed upon the payment of the agreed amount. To a

limited extent this Court had re-appreciated the said evidence which was definitely permissible under Section 100 of the Code of Civil Procedure in order to see whether the appellants have made out a case for framing substantial questions of law. As regards the limitation is concerned, though that was not the issue framed by both the Courts below, that fact was firstly noted by this Court, but it was the incidental thing for consideration to appreciate the conduct of the original plaintiff-appellant also. It was not the only point on which this Court had come to the conclusion that substantial questions are not shown. A detailed order has been passed and then the review applicants had even approached Hon'ble Supreme Court; yet, they had taken decision to approach this Court again with a review application. The present review application cannot be in disguise as an appeal and, therefore, the review petition is not maintainable, hence dismissed.

(Smt. Vibha Kankanwadi, J.)

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