

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.21 OF 2022
IN
SECOND APPEAL NO.352 OF 2020

BANDU NAGNATH GHONE

VERSUS

SANTOSH SHIVAJIAPPA RESHAME AND ANOTHER

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Mr. S.P. Urgunde, Advocate for applicant

Mr. S.M. Vibhute, Advocate for respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 16th DECEMBER, 2022.

ORDER :

1 The applicant is seeking review of the Judgment and order passed by this Court on 10.02.2021 in Second Appeal No.352 of 2020, thereby dismissing the said Second Appeal by holding that no substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure, 1908 are arising.

2 The applicant-appellant had filed the said Second Appeal challenging the Judgment and Decree dated 03.07.2020 passed by learned

District Judge-4, Latur in Regular Civil Appeal No.12/2017, thereby confirming the Judgment and Decree passed on 23.11.2016 by learned Civil Judge Senior Division, Latur in Special Civil Suit No.135/2010. The present applicant was the original defendant No.2. The special civil suit was filed by the original plaintiff/respondent No.1 in Second Appeal for specific performance of contract and perpetual injunction. That suit was partly decreed. The decree for specific performance was granted against defendant No.1, however, prayer for injunction was rejected. Thus, it is to be noted that all the three Courts, that is, Trial Court, First Appellate Court as well as this Court in Second Appeal had given concurrent decision and now the applicant has filed the present application for review.

3 Heard learned Advocate Mr. S.P. Urgunde for the applicant and learned Advocate Mr. S.M. Vibhute for respondent No.1.

4 It will not be out of place to mention here that a detailed order has been passed by this Court on 10.02.2021 while dismissing the Second Appeal. The Second Appeal was not admitted on the ground that it is not raising any substantial question of law as contemplated under Section 100 of the Code of Civil Procedure. It has been now submitted on behalf of the applicant that it was observed by the Courts below as well as this Court that

defence was taken by the applicant/defendant No.2 that defendant No.1 had executed an agreement to sell in his favour on 17.07.2008, that is, even prior to the agreement which was allegedly entered into between original plaintiff and defendant No.1. The present applicant had given the original agreement to his Advocates who had represented him at various stages. However, they have not filed the said document. The applicant wants to produce the said original agreement on record and then wants that agreement to be read in evidence. If it is not alleged then he would suffer irreparable loss because by way of that agreement to sell he was put in possession of the property by original defendant No.1. In fact, in the registered sale deed executed in favour of the applicant by defendant No.1 on 20.07.2010 it is stated that there is an agreement to sell executed on 17.07.2008 and, therefore, in fact, it was not even necessary to produce the said agreement to sell when the registered sale deed dated 20.07.2010 was produced on record. It is also then argued that the registered sale deed, though was executed subsequently than the filing of the suit, there was no amendment to the suit challenging the validity of the sale deed and, therefore, there is error apparent on the face of the record while deciding the Second Appeal requiring review of the same.

be seen that the pleadings are also mentioned when in fact, it was not even required to be mentioned. It was specifically stated by way of amendment that the defendant No.1 has sold the suit land to defendant No.2 on 19.07.2010 and, therefore, further prayer was added that the said sale deed is not binding on the plaintiff. Therefore, all the Courts have taken note of the subsequent event. Further, mere mention of the agreement to sell allegedly executed on 17.07.2008 in the sale deed dated 20.07.2010 is not sufficient compliance. If at all defendant No.2 wanted to base his title on the basis of that document i.e. the agreement to sell dated 17.07.2008, then its production and proof was mandatory. Defendant No.2 did not enter the witness box nor led any proof to prove the said agreement to sell. Observations in respect of the same are made by this Court while deciding the Second Appeal.

6 Now, the applicant wants to file the original agreement on record by saying that it was given to his Advocates representing at various stages; yet, those Advocates committed mistake. Here, important point to be stated that now along with this application also the applicant has not produced any separate application under Order 41 Rule 27 of the Code of Civil Procedure. Merely by saying that unless the review is allowed he will not be able to produce the said document cannot be a good excuse. A review cannot be

based on that document which was not before any of the Courts.

7 As regards the review is concerned, this Court cannot sit as an appellate Court on its own order. Reliance can be placed on the decision in **Haryana State Industrial Development Corporation Ltd. vs. Mawasi and others, AIR 2012 SC 3874**, wherein it has been observed that -

“The power of review is a creature of statute, Court, quasi-judicial body or administrative authority cannot review its judgment or order or decision unless it is legally empowered to do so.”

7.1 Further reliance can be placed on the decision in **Kishor R. Madan vs. Ramesh A. Phatnani, 2004(1) ALL MR 176**, wherein this Court had observed -

“Review proceedings cannot be equated with the original hearing of the case or an appeal. Finality to the order passed by the court cannot be revoked and the matter cannot be reconsidered except when glaring omission or patent mistake or grave error has crept up in the order delivered earlier. Merely because the order sought to be reviewed was overruled in another case subsequently is no ground to review the decision.”

7.2 Further reliance can be placed on the decision 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 For the aforesaid reasons it cannot be said that there is any error apparent on the face of the record in the Judgment and order passed by this Court on 10.02.2021 while dismissing the Second Appeal. Hence, present application stands rejected.

(Smt. Vibha Kankanwadi, J.)