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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 139 OF 2022
IN
WRIT PETITION NO.2989 OF 2016

Machindra Bhanudas Kulange and Others

APPLICANTS

VERSUS

Suresh Kisanrao Gaikwad and Another

RESPONDENTS

.....
Mr. Girish K. Naik-Thigle, Advocate for the applicants
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 19th JULY, 2022

ORDER :

1. This application seeks review of the judgment dated 6th December, 2021 passed by this Court in writ petition No. 2989 of 2016, by the said decision, the writ petition filed by the present respondents is allowed.
2. Heard learned advocate for the applicants.
3. It is necessary to note that the writ petition was argued by another advocate on behalf of the applicants – respondents in the writ petition and the present review application is filed through another advocate.

4. In **"T. N. Electricity Board and Another V/s V. N. Raju Reddiar and Another"** AIR 1997 SC 1005, the Apex Court has deprecated this practice. The Apex Court has held that -

“When an appeal / special leave petition is dismissed, except, in rare cases where error of law or fact is apparent on the record, no review can be filed, that to by the advocate on record who neither appeared nor was party in the main case, it is salutary to note that Court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession.”

5. Learned advocate for the applicants tried to argue the matter as if he is arguing the writ petition, which is not permissible in law.

6. While arguing the review petition, the same arguments, which were advanced at the time of hearing of the writ petition and which were considered and dealt with by this Court in the judgment under review, are repeated. This review petition appears to be an appeal in disguise. The applicants have repeated old and overruled arguments, which had concluded by the judgment under review.

7. No ground, provided under Order 47, Rule 1 of the Civil Procedure Code, is made out by the applicants, in the review petition. In "**Kamlesh Verma Vs. Mayawati and Others**" reported in **(2013) 8 SCC 320** , it is held:

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction."

8. The applicants have failed to point out any error apparent on the face of record, which has resulted into miscarriage of justice, hence, this Court is not inclined to exercise review jurisdiction. In "**State of West Bengal and Others Vs. Kamal Sengupta and Another**" reported in **(2008) 8 SCC 612** the Supreme Court has observed;

"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 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.”

9. In the present case, the judgment under review cannot be corrected on the ground that different view could have been taken by the Court on the point of fact or law and this Court cannot sit in appeal over its own judgment while exercising review jurisdiction.

10. In ***"Board of Control for Cricket in India and Another Vs Netaji Cricket Club and Others"*** reported in ***(2005) 4 SCC 741*** the grounds on which review can be entertained, which are as follows;

“88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. 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 Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

89. Order 47, Rule 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.

90. 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 Order 47, Rule 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".

92. Yet again in Lily Thomas (supra), this Court has laid down the law in the following terms:

"52. 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. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error"

The above ratio will not assist the applicants to support their review application.

11. This Court has come across various review applications which are filed by the parties who have lost in the writ petition and the review applications are argued by engaging another Advocates. This review is one of them.

12. There is no substance in the review application filed by the applicants. The applicants have failed to make out a case for review. Review application being devoid of merits, is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE