

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.109 OF 2021
IN
CIVIL APPLICATION NO.8148 OF 2020
IN
SECOND APPEAL NO.814 OF 2006**

**VITHAL SITARAM GORE (DECEASED) THROUGH LR
BABASAHEB VITTHAL GORE
VERSUS
PANKAJ ASHOK KARKHILE AND OTHERS**

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Mr. S.D. Kulkarni, Advocate for the applicant

Mr. P.R. Nangre, Advocate for respondent Nos.1 and 2

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 31st JANUARY, 2022

PRONOUNCED ON : 12th APRIL, 2022.

ORDER :

1 Present review application has been filed by the original appellant 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 Civil Application No.8148 of 2020 in Second Appeal No.814 of 2006 on 06.09.2021, whereby the Civil Application was rejected.

2 Heard learned Advocate Mr. S.D. Kulkarni for the applicant and learned Advocate Mr. P.R. Nangare for respondent Nos.1 and 2.

3 At the outset, it is to be noted that this Court on 06.09.2021 decided the Civil Application No.8148 of 2020 in Second Appeal No.814 of 2006. That application was filed by the original plaintiff-appellant for issuing directions to the respondents or their agents, servants or any person claiming through them for not to change the nature of suit property till the decision of the Second Appeal and other consequential reliefs. Further, it will not be out of place to mention here that after the pronouncement of the order also the learned Advocate for the applicant had made request that in view of the subsequent developments, when the respondents issued tender, this Court had directed the parties to maintain *status quo* and it should be continued. That oral request was also refused by this Court by giving a detailed order. Now, this is the another attempt for review.

4 The learned Advocate for the applicant has submitted that this Court had observed that the Regular Civil Suit as well as appeal filed by the present applicant came to be dismissed by the Courts below, and the applicant had failed to prove that the respondent No.1 has made illegal transaction on 30.11.1991, by giving part of the suit property to defendant

No.2 by accepting consideration of Rs.5,000/-. This Court questioned that when the existence of the property itself is in question, whether such injunction can be granted at the interim level. However, it is to be noted that both the Courts below had relied on the findings given by the Sub Divisional Officer, Ahmednagar, which itself were bad in law and perverse. The Grampanchayat has not kept the record properly and now it is taking disadvantage. When proper procedure laid down under Section 65 of the Indian Evidence Act was not adopted; yet documents were not proved, then, the Courts below ought to have held that the Grampanchayat has failed to prove that no such property as described in the plaint is in existence. The applicant under the Right to Information Act had asked for certain documents from respondent No.1 and those have been supplied by the Village Development Officer on 29.10.2021. In that it is informed that for receiving the amount of Rs.5,000/- from Vividh Karyakari Seva Sahakari Society Maryadit, Ralegan Therpal there is no entries in the society's record. It is admitted that no sale deed is effected and it was not produced before any Court. Measurement of the open property, that is, shown in the 8-A Extract has not been carried out. In fact, the construction work is going on at the disputed site. The respondents have misled this Court to vacate the interim order which was passed by this Court on 06.09.2021. At that time, this Court was of the view that prima facie case has been made out for *status*

quo and it was in operation for about 9 months. The property will have to be preserved till the decision of the case.

5 Further, it will not be out of place to mention here that the matter was heard on 31.01.2022 and was reserved for order and on 08.04.2022 it was pointed out by praecipe that now the construction has raised and now the respondents and their agents are intending to offer the possession of those shops to the third parties. Under such circumstance, it is necessary to grant injunction/*status quo* at the earliest in the matter.

6 Learned Advocate for the applicant has relied on the decision in **Board of Control for Cricket in India and another vs. Netaji Cricket Club and others, (2005) 4 SCC 741** on the point of review under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 and submitted that this is a fit case to review the order passed by this Court. It was in the backdrop of the grounds, those have been made out in the application, that the learned Advocate for the applicant was submitting that such order deserves to be passed.

7 Per contra, the learned Advocate for the respondent Nos.1 and 2 submitted that a detail order has been passed by this Court earlier and no case is made out for the review of the same. Both the Courts below have

dismissed the suit and appeal respectively. The Second Appeal is pending since 2006 and no order was earlier prayed.

8 At the outset, this Court admits that there is some delay in pronouncing the order in this review application, however, it is due to heavy work that has been assigned. One may say that, that may not be reasonable ground, but certainly fact will have to be considered in a way that already this Court had rejected the said Civil Application No.8148 of 2020 by giving a detailed order and on the same day when the order of continuation of *status quo* was also prayed, it was rejected by again giving a reason. As regards that *status quo* is concerned, at the cost of repetition it can be said that at the time of admitting the Second Appeal there was no application for injunction or any such application in anticipation that the property should remain as it is till the decision of Second Appeal was preferred. It was only in 2020, that is, after a gap of about 15 years such application has been filed. Note was required to be taken of the fact that when the suit was before the Trial Court there was construction on the disputed site and, therefore, the applicant-plaintiff had prayed for mandatory injunction for the removal of the same, but it was refused. Both the Courts below had held that the description of the property has not been proved. In this backdrop, when Civil Application No.8148 of 2020 was taken up by the applicant-plaintiff, this Court [Coram :

VL. Achliya, J.] passed the order - "In the meantime, the respondents are directed to maintain *status quo* in respect of the suit property exists as on the date of communication of this order." When on 06.09.2021 continuation of the said order was prayed, it was observed by this Court that while passing the said order on 11.12.2020 there was no reference to any documentary evidence and nothing was produced by the applicant regarding what was the construction when the matter was before the Trial Court and what was the construction as on 11.12.2021. Though photo copy of pits was produced, there was no details on the said photo copy as to when the said photograph was taken and there was no affidavit in support of the Photographer, who had taken those photographs, giving details about the property, on which those pits were taken. Now, when the construction was made the matter was before Trial Court, then, how there could be only pits around 11.12.2020, was a question. Therefore, this Court observed that the earlier when that order was passed on 11.12.2020 the details of the *status quo* were not stated and, therefore, it cannot be extended. By way of praecipe on 08.04.2022 the photographs have been produced, which show that construction is complete.

9 Now, coming to the review petition before going into the aspect whether the review is maintainable, the facts will have to be gone into in cursory manner. Now, the photo copy, which has been produced at Exh.'A', is

stated to be the copy of written statement by the Sarpanch, Grampanchayat, Ralegan Therpal on 17.11.1992 before Sub Divisional Officer. In that case it appears that Miscellaneous Appeal No.1/1992 was pending before the said authority, in which the Grampanchayat has stated that the Grampanchayat has not given a property No.276. Property No.403 belongs to Grampanchayat and it has been given to Fair Price Shop and office. This document, on the inquiry with the learned Advocate for the applicant, was not produced before the Courts below and, therefore, we cannot take into consideration this document unless the procedure contemplating under Order 41 Rule 27 of the Code of Civil Procedure is followed. Another document is produced regarding the Property Register-Tax Assessment from 2015-16 to 2018-19. The grievance of the applicant is in respect of the last column, in which it was stated that this Court has dismissed the suit (it appears that they wanted to say Second Appeal). However, the clarification is given by the learned Advocate for respondent Nos.1 and 2 that it has been inadvertently done and it has been then corrected. How this document would affect the review application, is a question. Further document that is produced is the Judgment given by Sub Divisional Officer, who had dismissed the Miscellaneous Appeal No.1/1992. It is stated that though this document was before the Court below, it was not exhibited. At the stage of interim orders this Court will have to consider the exhibited documents and those

documents which ought to have been exhibited but not exhibited for them the submissions will have to be made at the time of final hearing. Photographs of the construction that was going on were also filed at that time. On all these things it will have to be observed that when this Court had rejected the Civil Application No.8148 of 2020 and also the oral request, then, the applicant was at liberty to approach the Hon'ble Apex Court, but instead of approaching the higher Court the review application has been filed. Unless it is shown that there is error apparent on the face of the record, this Court cannot grant any relief in this review application. Those documents, which were not before the Courts below and in respect of them when procedure under Order 41 Rule 27 of the Code of Civil Procedure was not undertaken, on the basis of those documents there cannot be a review. The findings given by both the Courts below will have to be considered by this Court while dealing with an application for interim relief. Further, the record will have to be then considered and it appears that it has been considered by this Court while passing the said order on 06.09.2021. Detailed analysis is not expected, but the main fact that was considered was that the identity of the disputed property, that is, the suit property was not established. When the identity itself is not established, then, the plaintiff cannot be said to be having any interest in the said property, much less about ownership rights and, therefore, the decision has been given.

10 Now, on the maintainability of the review is concerned, there cannot be dispute in respect of ratio laid down in **Board of Control for Cricket in India and another** (supra). However, taking into consideration the facts of the case here that ratio is not applicable and even if for the sake of argument it is accepted that, that ratio will have to be considered; yet, the review cannot be accepted, for the reason that a detailed order has been passed and it has not been pointed out that there is error apparent on the face of the record. This Court cannot sit as an appellate Court on its own order. Reliance has been placed on the decision in **Haryana State Industrial Development Corporation Ltd. vs. Mawasi and others, AIR 2012 SUPREME COURT 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.”

10.1 Further reliance has been 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.”

10.2 Further reliance has been 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.”

11 Further this Court in Review Application (Stamp) No.14527 of

2020 observed that -

7. 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. 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."

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'."

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."

12 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."

11 Therefore, taking into consideration the scope of the review, provision of review, facts of the present case and the law laid down in above said authorities, this is absolutely not fit case where the order passed by this Court on 06.09.2021 deserves to be reviewed. There is absolutely no merit in the application. It deserves to be rejected. Accordingly it is rejected with costs.

(Smt. Vibha Kankanwadi, J.)