

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 REVIEW APPLICATION NO.53 OF 2022
IN
SECOND APPEAL NO.115 OF 1992

NAGNATH KISHAN KONDHEKAR (**DIED**) THROUGH LRS, RAM NAGNATH
KONDHEKAR AND OTHERS

VERSUS

BINDURAM TULJARAM JADHAV (**DIED**) THROUGH LRS, SHAKUNTALABAI
BINDURAM JADHAV (**DIED**) AND OTHERS

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Mr. P.V. Mandlik, Senior Counsel i/b Mr. P.P. Mandlik, Advocate for applicants

Mr. M.V. Ghatge, Advocate for respondent Nos.1(II), 1(III) and 2(IV)

B.N. Gadegaonkar, Advocate for the respondent No.1(V)

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 05th APRIL, 2022

ORDER :

1 Present review petition has been filed under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 for the review of Judgment in Second Appeal No.115 of 1992 decided on 02.12.2021 by this Court. The review petitioners were the appellants in the Second Appeal and the said Second Appeal came to be dismissed.

2 Heard learned Senior Counsel Mr. P.V. Mandlik instructed by learned Advocate Mr. P.P. Mandlik for applicants, learned Advocate Mr. M.V. Ghatge for respondent Nos.1(II), 1(III) and 1(IV) and learned Advocate Mr. B.N. Gadegaonkar for the respondent No.1(V).

3 At the outset, it can be seen that such statements have been made which are stated in the grounds. It is stated that this Court had come to the conclusion and declared on 09.03.2017 that the Second Appeal is allowed, however, for technical reasons Judgment was not signed and that order was recalled and the matter was again heard. The learned Senior Counsel representing the review petitioners points out this fact. However, it is to be noted that what had happened on 09.03.2017 cannot be binding on the Judgment which is hearing the Second Appeal later on, on 28.09.2021, because the matter was heard by this Court on 28.09.2021, it was reserved for Judgment and the Judgment was pronounced dismissing the Second Appeal on 02.12.2021. Whatever may be the reason the ultimate effect was that the Judgment was not signed and, therefore, it cannot be in practical sense said to be the Judgment. Every opportunity was given to the appellants to make their submissions and this Court has considered all those submissions. The substantial questions of law were framed in this case on 02.12.2014 and the Second Appeal has been decided on those substantial

questions of law.

4 The learned Senior Counsel representing review petitioners has again taken this Court to the facts of the case and it has been submitted that while deciding the Second Appeal this Court has omitted to notice and consider statutory provisions and grounds, however, those statutory provisions have not been again specified in a sense that they are repeated, which were already dealt with by this Court while deciding the Second Appeal. The entire petition is nothing but the replica of the grounds those were earlier raised with added fact that what are the observations of this Court taking into consideration the facts. In fact, the review petition is drafted as it is an appeal memo.

5 Learned Advocate Mr. M.V. Ghatge for respondent Nos.1(II), 1(III) and 1(IV) and learned Advocate Mr. B.N. Gadegaonkar for the respondent No.1(V) supported the reasons given by this Court and submitted that there is no error apparent on the face of the record.

6 Whether the review in such a form is maintainable itself is a question. Ratio in **Board of Control for Cricket in India and another vs. Netaji Cricket Club and others**, (2005) 4 SCC 741 may be helpful to the review petitioners, however, taking into consideration the facts of the case that ratio

will not be applicable here and furthermore when a detailed order/Judgment has been passed, wherein by taking into consideration the facts of the case as well as law involved, this Court had come to a certain conclusion, then, 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.”

6.1 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.”

6.2 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.”

7 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."

8 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."

9 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 Judgment passed by this Court on 02.12.2021 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.)

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