

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION NO. 6 OF 2022
IN
CIVIL REVISION APPLICATION NO. 290 OF 2022**

Mr. Suhas Janardan Chavan & Anr. ...Petitioners

vs.

Bikrampal Harichand Mehra (Deleted) & Ors ...Respondents

Mr. Suhas J. Chavan – Petitioner-in person

Mr. Nitin V. Gangal a/w. Mr. Atharva Dandekar, Mr. Akshata Naik for
the Respondents

CORAM : NITIN W. SAMBRE, J.

DATED : 20th September, 2022

P.C.:

1. The Petitioner has sought review of order of this Court passed on 30/06/2022 in Civil Revision Application No. 290 of 2022, Suhas Janardan Chavan & Anr. Vs. Bikrampal Harichand Mehra & Ors. L.E. Suit No 71/84 of 2008 was initiated by non-applicants for eviction on the ground of termination of license. The suit was based on leave and license agreement dated 01/10/1998.

2. Both the Courts below recorded concurrent findings against the Applicant. This Court at the behest of the present petitioner-licensee appreciated the claim put forth and rejected in the revision thereby confirming the findings recorded by both the Courts below as no error of jurisdiction or failure to exercise the jurisdiction was noticed.

3. At the relevant time, the civil revision application was argued on behalf of the review petitioner/applicant by a lawyer. However, the review petition is moved by the petitioner on his own after taking permission from the competent committee of this Court. He has made a categorical statement that he has no grievance against Counsel who has represented him earlier.

4. The petitioner has brought to my notice the fact that he has already initiated RAD suit no. 3113 of 2012 wherein the issues about his right of tenancy over the suit premises was framed on 17/08/2015. According to him, the aforesaid factual position was not brought to the notice of this Court and as such this Court has proceeded to record erroneous findings thereby rejecting the prayer of the applicant by upsetting the judgments of both the Courts below.

5. According to him, the aforesaid fact was pleaded and ought to have been considered by this Court.

6. He would further urge that the aforesaid suit proceedings were stayed at the behest of the decree holders i.e. licensors and that being so decree of eviction ought not to have been confirmed by this Court based on the leave and license agreement.

7. Mr. Gangal, learned counsel for the decree holders i.e non-

applicants would invite attention of this Court to two judgments viz. *Haridas Das vs. Usha Rani Banik (Smt) and Others (2006) 4 SCC 78 & Priyanka Communication (India) Pvt. Ltd. & Ors. vs. Tata Capital Financial Services Ltd. 2021 (5) ALL MR 338*. He would urge that the above issue was not canvassed when the revision was argued. According to him, on the aforesaid ground the review petition is not maintainable.

8. I have appreciated the said submissions.

9. The judgment of the Apex Court in the matter of *Haridas Das* (supra) in paragraph no. 13 the Apex Court has observed thus:

"13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the Court since it merely states that it "may make such order thereon as it thinks fit." The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. This is amply evident from the explanation in Rule 1 of the Order 47 which states that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection. This Court in *M/s. Thungabhadra Industries Ltd. v. Government of A.P.* held as follows:

"There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. ... where without any elaborate argument one could point to the error and say here is a substantial point of law which states 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."

10. This Court in the matter of *Priyanka (supra)* has taken a similar view as is taken in the matter of *Haridas (supra)* and considered the issue as regards the scope of review and has made following observations in paragraph nos. 19 to 20, which reads thus:

"19. We have Counsel for a reason. We expect of them certain skills. Foremost among these is their ability to sanguinely render assistance to the Court. This purpose is fundamental. It is not achieved by saying that Counsel's arguments are irrelevant. It is not achieved by saying that counsel overlooked or were not properly briefed or that counsel ought to have but did not take some point. Counsel often realize, as well they should, that not all arguments taken in affidavits or even in written submissions are worth pursuing. They confine their arguments to a few points. They know that the rest do not matter and will not convince. If Counsel has not urged a point, the fact that there were written submissions is immaterial if those written submissions were never in fact argued.

20. Counsel's failure to argue written submissions is not a

ground of review or, I dare say, even appeal. It is no ground to assail any order of any judge of any court. If the written submissions were to be relied on, that ought to have been done during arguments, or, at any rate, while judgment was being dictated in open court or at best shortly after the judgment or order was uploaded. These never-argued written submissions cannot be taken in hindsight"

11. Facts remains that aforesaid issue of pendency of RAD Suit No. 3113 of 2012 though was pleaded was not brought to the notice of this Court. As the said issue was not canvassed by the counsel for the applicant at the relevant time, this Court in view of the law laid down by the Apex Court and this Court in the aforesaid judgment cannot held that there is error apparent on the face of the record so as to allow the application, thereby reviewing the judgment.

Rather on the issue canvassed by the applicant it has to be held that there is no ground for review of the judgment.

12. The pendency of aforesaid RAD Suit in which claim as regards tenancy right of the applicant is canvassed in my opinion will have hardly any significance or consequence on the present proceedings particular when the issue of existence of leave and license agreement has been answered in favour of the non-applicant/plaintiff/decreed holder.

13. As such review application in my opinion warrants dismissal as no error apparent on the face of the record is noticed.

14. Accordingly, review application stands dismissed, however, the protection order in favour of the applicant shall continue for the period of six weeks from today.

(NITIN W. SAMBRE, J.)

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