

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

**19 REVIEW APPLICATION (CIVIL) NO.55 OF 2019
IN SA/122/2018**

**INDUBAI PUNDLIK JAPE LRS SHAKUNTALA AND OTHERS
VERSUS
GULABCHAND FAKIRCHAND GANDHI LRS PYARABAI LRS KIRAN AND
OTHERS**

Mr.Sachin S. Deshmukh h/f. Mr. K.M. Nagarkar, Advocate for the applicant.
Mr.U.S. Malte, Advocate for respondent Nos. 1 to 8.

**CORAM : KISHORE C. SANT, J.
DATED : 26.10.2023**

PC :-

01. Heard learned Advocates for the parties. This review application is filed seeking review of the judgment and order passed by this Court in Second Appeal No.122 of 2018 dated 04.12.2018, by which the appeal of the respondents came to be allowed, setting aside concurrent findings of the Trial Court and the First Appellate Court. By the judgments impugned in Second Appeal, the suit of the present applicants came to be dismissed as barred by the limitation.

02. This Court refers to only the date of the document in view of the arguments advanced before this Court, since the case is argued only on the

point of limitation. A deed was executed on 27.04.1964 creating mortgage by conditional sale whereby the land was given for 10 years and thereafter was to be taken back by the plaintiffs on payment of mortgage money. Thus, the cause of action arose in the year 1974 at the end of term of 10 years. The suit was filed on 06.04.2004 for redemption. The defence was that in the document the recital shows that money was to be paid by the end of *Falgun* (month of Hindu calendar) after 10 years i.e. *Falgun*, 1974. The argument was thus that the *Falgun* of 2003 came to an end on 20.03.2004 whereas the suit is filed on 06.04.2004. This case of defendant is accepted by this Court holding that the suit filed on 06.04.2004 was barred by limitation.

03. The learned Advocate for the applicants at the outset submits that for the first time the argument about *Falgun* month was advanced before this Court and it is for the first time the said argument is accepted by this Court, when there is no reference to the word "*Falgun*" in the entire documents. It is his case therefore that when the document was executed on 27.04.1964, the period of 10 years is to be taken from the date of execution of document and thus it was till 27.04.1974 and therefore the suit was rightly filed in time. He thus submits that this Court by accepting the word *Falgun* committed an error

on the face of record.

04. Learned Advocate Mr. Malte submits that for entertaining the review this Court has to first keep in mind that the points which are already agitated and considered by this Court even, if wrongly, still review cannot be entertained. He further submits that as a matter of fact the point of limitation was raised in the Trial Court. It was specifically put to the plaintiff's witness that end of Falgun was the date by which the amount was to be repaid. He invited attention to the cross-examination of the plaintiff's witness. PW-3, namely, Chandrakant Pundlik Jape accepts in the cross-examination as under :-

“वरील सदरची रक्कम र ३०००/- तीन हजार आज पासून पहिले पाच वर्षांनीच फाल्गून अखेर देईल.”

. Meaning thereby that the said amount of Rs.3000/- was to be paid from the date of execution of the document within first five years at the end of *Falgun*. It is further seen that the document Exh.52 i.e. reconveyance was to be executed after 10 years by end of *Falgun*. He also invited attention to document Exh.52, wherein *Falgun* is referred in short-form as “Fa” (फा), which the learned Advocate for the applicants tried to submit that “Fa” infact

is “Chya” (च्या). The learned Advocate Mr. Malte has also taken this Court through judgment of the Trial Court, wherein the Trial Court has specifically considered the limitation with reference to month *Falgun* to submit that it is case of the respondents from beginning that the performance was to be done by end of *Falgun* after 10 years. He thus submits that this is not new case accepted for the first time in the second appeal.

05. Learned Advocate Mr. Malte relied upon judgment in the case of **Arun Dev Upadhyaya Vs. Integrated Sales Service Ltd. And Anr., (2023) 8 SCC 11**. He specifically referred to paras 29 and 30 of the judgment to submit that Hon’ble Apex Court has considered and discussed the scope of phrase “error apparent on the face of record” and held that the review is not a substitute for an appeal and power of review is not same as available to the Appellate Court. The Appellate Court has power to correct all the mistakes or errors committed by subordinate Court wherein in review jurisdiction only error apparent on the face of record can be corrected. It is further held that if the error is to be found out by lengthy and complicated arguments, certainly that cannot be said to be an error apparent on the face of record.

06. Learned Advocate Mr. Malte further relied upon judgment in the case of Shanti Conductors Pvt. Ltd. Vs. Assam State Electricity Board and Others reported in (2020) 2 SCC 677. He particularly relied upon para 25 of the said judgment wherein the Hon'ble Apex Court considered the case of Parsion Devi Vs. Sumitri Devi reported in (1997) 8 SCC 715. Same is reproduced as under :-

21. Insofar as other submissions of Dr. Singhvi that Act, 1993 is retroactive in nature and further amount due at the time of the commencement of the Act ought to attract interest of the Act, 1993, all these submissions have been elaborately considered in the judgment dated 23.01.2019, which have been considered on merits. The scope of review is limited and under the guise of review, petitioner cannot be permitted to reagitate and reargue the questions, which have already been addressed and decided. The scope of review has been reiterated by this Court from time to time. It is sufficient to refer the judgment of this Court in Parsion Devi and Others Vs. Sumitri Devi and Others, (1997) 8 SCC 715, wherein in paragraph 9 following has been laid down:-

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. 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. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.”

07. The learned Advocate for the applicant relied upon judgment in the case of **Pandit Dhana Mali Vs. Bhimabai (dead) Through LRs., reported in (2007) 15 SCC 434.** It is held that in the said case that remedy of review is available even if in the case second appeal is decided.

08. The learned Advocate for the applicant, in support of his submissions, has also relied upon judgment in the case of **S. Bagirathi Ammal Vs. Palani Roman Catholic Mission reported in (2009) 10 SCC 646,** wherein grounds for review are considered i.e. (a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed; (b) on account of some mistake; (c) where error is apparent on the face of the record or is a palpable wrong; (d) any other sufficient reason.

09. This Court has considered the arguments and submissions of both the parties and has also considered the judgments cited in support of their submissions. This Court, while deciding the second appeal discussed point of limitation by considering the submissions in detail. Though it is submitted that, for the first time this Court has considered the limitation with reference

to Hindu month *Falgun*, however, from the judgment of the Trial Court and also of the Appellate Court, it is clearly seen that it is a consistent stand of the respondent since Trial Court. The questions were also put in cross-examination on this aspect where the plaintiff has accepted that the reference in document is to the month of *Falgun* .

10. Considering all these aspects, this Court finds that no case is made out showing error apparent on the face of record to review the judgment and order. Hence, the review application stands dismissed with no order as to costs.

[KISHORE C. SANT, J.]