

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

**REVIEW APPLICATION (CIVIL) NO.75 OF 2021
IN CRA/204/2017**

Rajendra Maganlal Sonwane

...Petitioner

Versus

1. Devidas Haribhai Ved

2. Rajendra Avachit Suryawanshi

...Respondents

...

Advocate for Applicant : Mr. Kale Ajeet B.

Advocate for Respondent No.1 : Mr. Girish S. Rane

...

CORAM : S.G. MEHARE, J.

DATED : SEPTEMBER 05, 2023

PER COURT:-

1. Heard the respective counsels.

2. This is a review application filed by the revisional petitioner against the order of this Court passed in Civil Revision Application No.204 of 2017 dated 20.02.2020.

3. The revision was preferred by the present petitioner against the order of the learned District Judge rejecting an application for condonation of delay of 10 years, 10 months, 15 days. The applicant had filed an application for condonation of delay assigning the reasons that the settlement talks were going on between the parties. Hence, the execution was not filed for about 10 years.

Further, he has quoted the reason for delay that the business of the applicant was running slow. He was facing financial difficulties.

4. Learned counsel for the review petitioner would submit that while dismissing the revision application, the Court did not consider the merits of the case. The conduct of the respondent was to be considered that he was receiving the rent. Hence, he had not file the execution for the period of 10 years. He would argue that the petitioner was requesting this Court to give him a re-hearing of the delay condonation application on merit. It is not the prayer of the applicant that the order of the learned District Judge shall be set aside. The legal aspect of considering the merit of the matter has not been considered. Hence, there is a *prima facie* error on the face of record in the order under review.

5. Learned counsel for the respondent has vehemently argued that the conduct of the applicant itself shows that he was negligent and deliberately avoiding the hearing of the matter. He has given the accounts of the various dates from the date of presenting the review application and pointed out that those were deliberate acts of the applicant to protract the hearing of the present review application. He would submit that the order under review is dated 20.02.2020. The same Coram was available here till 2022 but no attempts were made to list the matter before the said Coram. So this is nothing but only the forum hunting. He would also argue that the

applicant deliberately allowed the review application to be dismissed for default. Such a lethargic approach of the applicant shows that his applications were not bonafide. The impugned order dismissing the revision is legally correct and proper and all the aspects as laid down by the Hon'ble Supreme Court in the case of Kamlesh Verma Vs. Mayawati and Ors, AIR 2013 SC 3301, N. Anantha Reddy Vs. Anshu Kathuria and Ors, AIR 2014 SC (Supp) 1798, S. Murali Sundaram Vs. Jothibai Kannan and Others, 2023 SCC Online SC 185, have been borne in mind while passing the order under review. In sum and substance, he has vehemently argued that the conduct of the applicant in pursuing the matter is an important aspect and that is to be considered. Not only the applicant, but the interest of the opponents shall also be given weightage.

6. On the scope of review of the proceedings, relying upon the above judgments, he would argue that the review proceedings cannot be equated with the original hearing of the case. The scope of for review of the order is very limited. There shall be errors of law on the face of record and the arguments would not be by way of an appeal and review shall be strictly confined to the scope and ambit of Order 47 Rule 1 of the Civil Procedure Code. 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 alternate view is possible under review jurisdiction. The review is not maintainable when the same relief is sought at the time of arguing the main matter is negatived.

7. The main argument of the learned counsel for the petitioner, that the petitioner does not want to set aside the impugned judgment of the District Judge, he just wants re-hearing of the matter. Exactly, the similar arguments were advanced before the earlier Coram of this Court and the Court has note down the similar arguments in para 4 of the order under review. So there is no scope to consider these arguments again. He relied on the case of Raheem Shah and Another Vs. Govind Singh and Others, 2023 SC Online SC 910, in which the Hon'ble Supreme Court has laid down the law as regards the liberal approach in the context of 'sufficient cause' mentioned in Section 5 of Indian Limitation Act. The order under review was passed long before the said pronouncement. Hence, it could not be accepted that the Court should consider the ratio laid down in the above case. Be that as it may, there was a inordinate delay on the face of record. The order under review was well reasoned. Each and every aspect was considered. Learned counsel for the applicant failed to satisfy the Court that the application is confined to the scope and ambit of Order 47 Rule 1 of the Civil Procedure Code. The arguments which were considered earlier is

apparently not the ground to review the order. As far as the conduct of the applicant is concerned, initially he was late to reach the Court by 10 years, 10 months and 15 days. Thereafter, again taking the advantage of Covid-19 pandemic, he filed the present review application. It was kept pending for removal of objections and after removing all objections when the matter was reached before the Court, he did not appear diligently and hence, it was dismissed for default. Again the Court taking a liberal view restored the application. The conduct of the applicant itself is disqualification. At the cost of repetition, the Court observed that there is no error on the face of record to review the order under review.

8. For the above reasons, the review application stands dismissed with cost of Rs.5,000/- to be paid to the respondent.

(S.G. MEHARE, J.)