

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

903 REVIEW APPLICATION (CIVIL) NO.155 OF 2019
IN ARB/11/2018

M/S M R MUTHA, PARTNERSHIP FIRM, THROUGH ITS
PARTNER, JAWAHAR MOHANLAL MUTHA
VERSUS
THE STATE OF MAHARASHTRA, THROUGH THE EXECUTIVE
ENGINEER, KUKDI IRRIGATION PROJECT, AHMEDNAGAR

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Mr D. P. Palodkar, Advocate for applicant;
Mr S. G. Sangle, A.G.P. for respondent

CORAM : RAVINDRA V. GHUGE, J.

DATE : 9th February, 2023

PER COURT:

1. The applicant prays for reviewing the order of this Court, dated 30/04/2019, passed in Arbitration Application No.11/2018, more specifically, the observations in paragraph Nos.5 and 6, which led to imposition of costs of Rs.25,000/-. The costs amount was directed to be deposited with the Government Medical College and Hospital, Aurangabad. The same has been deposited and has been disbursed.

2. The learned Advocate for the applicant has strenuously canvassed that, it was never the intention of the applicant to suppress any fact or feature from the case, while addressing this Court. The applicant does not have any intention of misleading the Court or suppressing any material from the Court. Following

are the grounds (I to VI), which are put forth by the review applicant in this review application, reproduced verbatim :-

GROUND

I. That the fact that in Index of the application filed for appointment of Arbitrator mention to the Second Appeal and also in the body of the application it is disclosed, appears to have escaped the attention of this Hon'ble court.

II. That the fact that the applicant himself moved the Hon'ble court to call for the record of Second Appeal no.1074/2004 for perusal and the said record was called and is referred to in the listing dates and was perused. This conduct overrules possibility of any suppression.

III. That the fact that the applicant himself requested the court to call for the record of second appeal which clearly and firmly show that the applicant has no intention not to file the said copy but it was the mistake of the office of the petitioner's Advocate.

IV. That the fact that the copy of the Judgement of Second Appeal was down-loaded on 4/3/2019 is clear from the copy which is being produced as ANNEXURE-B. The copy of listing dates is annexed and marked as ANNEXURE-C. The said copy was sought to be tendered in the court as above was admitted by the Advocate for the other side on 30/4/2019 which appears to have missed the attention of this Hon'ble court.

V. That the finding in para-5 onwards are against the principles of natural justice and the merits of the matter remained to be considered, escaped the attention of this Hon'ble court.

VI. Even otherwise there are errors apparent on the face of record as pointed out above.”

3. Though the learned Advocate for the applicant has made a valiant attempt to convey to the Court that the applicant never had

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the intention of suppressing or misdirecting the Court, the fact remains that the applicant had, all along, canvassed that the appointment of the Arbitrator was set aside in Second Appeal, only because he was a former employee of the establishment. However, the record reveals that the appointment of the Arbitrator was set aside as such appointment was beyond the limitation prescribed for appointing the Arbitrator after the work order contract was exhausted. This aspect has been dealt with by the Court in paragraph Nos.4, 5 and 6 of the order sought to be reviewed.

4. As such, this aspect, being a matter of fact, the grounds for review do not establish that this Court had committed any error on the face of the order. The amount of Rs. 25,000/- towards costs, has already been deposited by the petitioner in this Court and the same has been disbursed to the Government Medical College and Hospital, Aurangabad.

5. In view of the above, no ground is made out. The review application is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

sjk