

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 94 OF 2023
IN FIRST APPEAL NO. 1079 OF 2021

1. Dr. Prabhuappa Ramlingappa Choudhari,
Age : 82 years, Occ. : Medical Practice,
R/o. : Majge Nagar, Latur
2. Prabhakar Digambar Tondare,
Age : 84 years, Occ. : Agriculture,
R/o. : Nagapur, Tq. Parli, Dist. Beed
3. Babuappa Ramappa Khobre,
Age : 79 years, Occ. : Agriculture,
R/o. : Wani Galli, Renapur, Tq. Renapur,
Dist. Latur
4. Mallikarjun Shankarappa Halkude,
Age : 79 years, Occ. : Agriculture,
R/o. : Wani Galli, Renapur, Tq. Renapur,
Dist. Latur

... Applicants
(Ori. Appellants)

VERSUS

1. Revansiddh Mahadavyya Hiremath,
Age : 43 years, Occ. : Service,
2. Channabasav Guru Mahaling Shivacharya,
Age : 14 years, Occ. : Mathadipati,
U/g of his father Revansidh Mahadavyya Hiremath
3. Ballapa Baslingappa Mahajan,
Age : 54 years, Occ. : Agriculture,

All above R/o. : Bardapur, Tq. Abajogai, Dist. Beed

4. Subhash Mahadevppa Nitrudkar,
Age : 62 years, Occ. : Agriculture,

R/o. : Sonpeth Tq. Sonpeth, Dist. Parbhani

5. The Tahsildar,
Tahsil Office Ambajogai,
Dist. Beed
6. The Police Inspector,
Police Station, Bardapur,
Tq. Ambajogai, Dist. Beed

... Respondents

(Resp. Nos.1 to 4 - Ori.
Respondents in First Appeal)

...

Mr. V.D. Salunke h/f. Mr. V.G. Kodale and Mr. S.P. Choudhari –
Advocate for Applicants

Mr. P.M. Nagargoje – Advocate for Respondent Nos.1, 2 and 4

Mr. P.M. Kulkarni – AGP for Respondent Nos.5 and 6, State

....

WITH

**CIVIL APPLICATION NO. 7755 OF 2023
IN REVIEW APPLICATION NO. 94 OF 2023
IN FIRST APPEAL NO. 1079 OF 2021**

1. Dr. Prabhuappa Ramlingappa Choudhari,
Age : 82 years, Occ. : Medical Practice,
R/o. : Majge Nagar, Latur
2. Prabhakar Digambar Tondare,
Age : 84 years, Occ. : Agriculture,
R/o. : Nagapur, Tq. Parli, Dist. Beed
3. Babuappa Ramappa Khobre,
Age : 79 years, Occ. : Agriculture,
R/o. : Wani Galli, Renapur, Tq. Renapur,
Dist. Latur
4. Mallikarjun Shankarappa Halkude,
Age : 79 years, Occ. : Agriculture,
R/o. : Wani Galli, Renapur, Tq. Renapur,
Dist. Latur

... Applicants

(Ori. Petitioners)

VERSUS

1. Revansiddh Mahadavyya Hiremath,
Age : 43 years, Occ. : Service,
2. Channabasav Guru Mahaling Shivacharya,
Age : 14 years, Occ. : Mathadipati,
U/g of his father Revansidh Mahadavyya Hiremath
3. Ballapa Baslingappa Mahajan,
Age : 54 years, Occ. : Agriculture,

All above R/o. : Bardapur, Tq. Abajogai, Dist. Beed

4. Subhash Mahadevppa Nitrudkar,
Age : 62 years, Occ. : Agriculture,
R/o. : Sonpeth Tq. Sonpeth, Dist. Parbhani
5. The Tahsildar,
Tahsil Office Ambajogai,
Dist. Beed
6. The Police Inspector,
Police Station, Bardapur,
Tq. Ambajogai, Dist. Beed

... Respondents

(Resp. Nos.1 to 4 – Ori. respondents)

...

Mr. V.D. Salunke h/f. Mr. V.G. Kodale – Advocate for Applicants

Mr. P.M. Nagargoje – Advocate for Respondent Nos.1, 2 and 4

Mr. P.M. Kulkarni – AGP for Respondent Nos.5 and 6, State

....

WITH

**CIVIL APPLICATION NO. 10474 OF 2023
IN REVIEW APPLICATION NO. 94 OF 2023
IN FIRST APPEAL NO. 1079 OF 2021**

1. Dr. Prabhuappa Ramlingappa Choudhari,
Age : 82 years, Occ. : Medical Practice,
R/o. : Majge Nagar, Latur

2. Prabhakar Digambar Tondare,
Age : 84 years, Occ. : Agriculture,
R/o. : Nagapur, Tq. Parli, Dist. Beed
3. Babuappa Ramappa Khobre,
Age : 79 years, Occ. : Agriculture,
R/o. : Wani Galli, Renapur, Tq. Renapur,
Dist. Latur
4. Mallikarjun Shankarappa Halkude,
Age : 79 years, Occ. : Agriculture,
R/o. : Wani Galli, Renapur, Tq. Renapur,
Dist. Latur

... Applicants

(Ori. Petitioners)

VERSUS

1. Revansiddh Mahadavya Hiremath,
Age : 43 years, Occ. : Service,
2. Chanbasav Guru Mahaling Shivacharya,
Age : 14 years, Occ. : Mathadipati,
U/g of his father Revansidh Mahadavya Hiremath
3. Ballapa Baslingappa Mahajan,
Age : 54 years, Occ. : Agriculture,

All above R/o. : Bardapur, Tq. Abajogai, Dist. Beed

4. Subhash Mahadevppa Nitrudkar,
Age : 62 years, Occ. : Agriculture,
R/o. : Sonpeth Tq. Sonpeth, Dist. Parbhani
5. The Tahsildar,
Tahsil Office Ambajogai,
Dist. Beed
6. The Police Inspector,
Police Station, Bardapur,
Tq. Ambajogai, Dist. Beed

... Respondents

(Resp. Nos.1 to 4 – Ori. respondents)

...
Mr. V.D. Salunke h/f. Mr. V.G. Kodale and Mr. S.P. Choudhari –
Advocate for Applicants
Mr. P.M. Nagargoje – Advocate for Respondent Nos.1, 2 and 4
Mr. P.M. Kulkarni – AGP for Respondent Nos.5 and 6, State
....

**WITH
REVIEW APPLICATION NO. 93 OF 2023
IN FIRST APPEAL NO. 1179 OF 2021**

1. Dr. Prabhuappa Ramlingappa Choudhari,
Age : 82 years, Occ. : Medical Practice,
R/o. : Majge Nagar, Latur
2. Prabhakar Digambar Tondare,
Age : 84 years, Occ. : Agriculture,
R/o. : Nagapur, Tq. Parli, Dist. Beed
3. Babuappa Ramappa Khobre,
Age : 79 years, Occ. : Agriculture,
R/o. : Wani Galli, Renapur, Tq. Renapur,
Dist. Latur
4. Mallikarjun Shankarappa Halkude,
Age : 79 years, Occ. : Agriculture,
R/o. : Wani Galli, Renapur, Tq. Renapur,
Dist. Latur
5. Vitthal Govind Bhosale,
Age : 42 years, Occ. : Agriculture,
R/o. : Gavlipimpri, Tq. Sonpeth,
Dist. Parbhani

... Applicants
(Ori. Appellants)

VERSUS

1. Revansiddh Mahadavya Hiremath,
Age : 43 years, Occ. : Service,
2. Channabasav Guru Mahaling Shivacharya,

Age : 14 years, Occ. : Mathadipati,
U/g of his father Revansidh Mahadavya Hiremath

3. Ballapa Baslingappa Mahajan,
Age : 54 years, Occ. : Agriculture,

All above R/o. : Bardapur, Tq. Abajogai, Dist. Beed

4. Baslingappa Vishwanathappa Modiwale,
Age : 67 years, Occ. : Agriculture,
R/o. : Degol (e) Tq. Sonpeth, Dist. Parbhani

5. Joint Charity Commissioner (*deleted*)

6. The Tahsildar,
Tahsil Office Ambajogai,
Dist. Beed

7. The Police Inspector,
Police Station, Bardapur,
Tq. Ambajogai, Dist. Beed

... Respondents

(Resp. Nos.1 to 4 – Ori. respondents)

...

Mr. V.D. Salunke h/f. Mr. V.G. Kodale and Mr. S.P. Choudhari –
Advocate for Applicants

Mr. P.M. Nagargoje – Advocate for Respondent Nos.1, 2 and 4

Mr. P.M. Kulkarni – AGP for Respondent Nos.6 and 7, State

....

**WITH
REVIEW APPLICATION NO. 162 OF 2023
IN CIVIL APPLICATION NO. 1335 OF 2022
IN FIRST APPEAL NO. 1079 OF 2021**

1. Shri. Panditaradhya Guru Mahaling Shivacharya,
Age : 55 years, Occ. : Mathadhipati,
R/o. : Shri. Guru Mahaling Swami Math,
Bardapur, Tq. Ambajogai, Dist. Beed,
At present : Vadangali, Tq. Sinnar,
Dist. Nashik

... Applicant

(Ori. Intervenor/Applicant)

BETWEEN

1. Dr. Prabhuappa Ramlingappa Choudhari,
Age : 82 years, Occ. : Medical Practice,
R/o. : Majge Nagar, Latur
2. Prabhakar Digambar Tondare,
Age : 84 years, Occ. : Agriculture,
R/o. : Nagapur, Tq. Parli, Dist. Beed
3. Babuappa Ramappa Khobre,
Age : 79 years, Occ. : Agriculture,
R/o. : Wani Galli, Renapur, Tq. Renapur,
Dist. Latur
4. Mallikarjun Shankarappa Halkude,
Age : 79 years, Occ. : Agriculture,
R/o. : Wani Galli, Renapur, Tq. Renapur,
Dist. Latur
5. Vitthal Govind Bhosale, (*deleted*)
Age : 42 years, Occ. : Agriculture,
R/o. : Gavlipimpri, Tq. Sonpeth,
Dist. Parbhani

... Original Appellants**VERSUS**

1. Revansiddh Mahadavya Hiremath,
Age : 43 years, Occ. : Service,
2. Channabasav Guru Mahaling Shivacharya,
Age : 14 years, Occ. : Mathadipati,
U/g of his father Revansidh Mahadavya Hiremath
3. Ballapa Baslingappa Mahajan,
Age : 54 years, Occ. : Agriculture,

All above R/o. : Bardapur, Tq. Abajogai, Dist. Beed

4. Subhash Mahadevappaa Nitrudkar,
Age : 58 years, Occ. : Agriculture,

R/o. : Sonpeth, Dist. Parbhani

5. The Tahsildar,
Tahsil Office Ambajogai,
Dist. Beed
6. The Police Inspector,
Police Station, Bardapur,
Tq. Ambajogai, Dist. Beed

... Original Respondents

...

Mr. A.P. Yenegure – Advocate for Applicant (Ori. Intervenor)
Mr. V.D. Salunke h/f. Mr. V.G. Kodale and Mr. S.P. Choudhari –
Advocate for Applicants
Mr. P.M. Nagargoje – Advocate for Respondent Nos.1, 2 and 4
Mr. P.M. Kulkarni – AGP for Respondent Nos.5 and 6, State

....

**WITH
REVIEW APPLICATION NO. 163 OF 2023
IN CIVIL APPLICATION NO. 1321 OF 2022
IN FIRST APPEAL NO. 1179 OF 2021**

1. Shri. Panditaradhya Guru Mahaling Shivacharya,
Age : 55 years, Occ. : Mathadhipati,
R/o. : Shri. Guru Mahaling Swami Math,
Bardapur, Tq. Ambajogai, Dist. Beed,
At present : Vadangali, Tq. Sinnar,
Dist. Nashik

... Applicant

(Ori. Intervenor/Applicant)

BETWEEN

1. Dr. Prabhuappa Ramlingappa Choudhari,
Age : 82 years, Occ. : Medical Practice,
R/o. : Majge Nagar, Latur
2. Prabhakar Digambar Tondare,
Age : 84 years, Occ. : Agriculture,
R/o. : Nagapur, Tq. Parli, Dist. Beed
3. Babuappa Ramappa Khobre,

Age : 79 years, Occ. : Agriculture,
R/o. : Wani Galli, Renapur, Tq. Renapur,
Dist. Latur

4. Mallikarjun Shankarappa Halkude,
Age : 79 years, Occ. : Agriculture,
R/o. : Wani Galli, Renapur, Tq. Renapur,
Dist. Latur

5. Vitthal Govind Bhosale,
Age : 42 years, Occ. : Agriculture,
R/o. : Gavlipimpri, Tq. Sonpeth,
Dist. Parbhani

... Original Appellants

VERSUS

1. Revansiddh Mahadavyya Hiremath,
Age : 43 years, Occ. : Service,
2. Channabasav Guru Mahaling Shivacharya,
Age : 14 years, Occ. : Mathadipati,
U/g of his father Revansidh Mahadavya Hiremath
3. Ballapa Baslingappa Mahajan,
Age : 54 years, Occ. : Agriculture,

All above R/o. : Bardapur, Tq. Abajogai, Dist. Beed

4. Baslingappa Vishwanathappa Modiwale,
Age : 65 years, Occ. : Agriculture,
R/o. : Digol (E), Tq. Sonpeth, Dist. Parbhani
5. The Tahsildar,
Tahsil Office Ambajogai,
Dist. Beed
6. The Police Inspector,
Police Station, Bardapur,
Tq. Ambajogai, Dist. Beed

... Original Respondents

...

Mr. A.P. Yenegure – Advocate for Applicant (Ori. Intervenor)
Mr. V.D. Salunke h/f. Mr. V.G. Kodale and Mr. S.P. Choudhari –
Advocate for Applicants
Mr. P.M. Nagargoje – Advocate for Respondent Nos.1, 2 and 4
Mr. P.M. Kulkarni – AGP for Respondent Nos.5 and 6, State

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CORAM : SANDIPKUMAR C. MORE, J.

DATE : 9th October, 2023

ORDER :

1. The appellants in First Appeal No.1079 of 2021 and First Appeal No. 1179 of 2021 have preferred Review Application Nos.93 and 94 of 2023 for review of the common judgment in aforesaid appeals. In Review Application No.94 of 2023 they have also preferred two civil applications namely Civil Application No.7755 of 2023 and Civil Application No.10474 of 2023 for staying the order dated 3rd February, 2021 passed by the learned Joint Charity Commissioner, Latur, Division Latur in Application No.84 of 2018. In the alternative, they have also prayed for appointments of Care Takers as done in the aforesaid order be continued till disposal of all the pending Change Reports before the learned Assistant Charity Commissioner, Beed. Under Civil Application No.10474 of 2023 the applicants have claimed certain arrangements for the amount of Rs.28.54 lakhs belonging to the Trust Sansthan Shri. Gurumahaling Swami Math, Bardapur, such as keeping it in fixed

deposit for the period of five years.

2, On the other hand, the intervenor in the aforesaid appeals has also sought review of order passed by this Court in the aforesaid appeals dated 13th October, 2022. Since the subject matter of all these Review Applications is same i.e. common judgment in First Appeal Nos.1079 and 1179 of 2021, I have decided to pass common order in these Review Applications and Civil Applications therein.

3. Learned Counsel for the applicant in Review Application Nos.93 and 94 of 2023 submits that, the review of impugned order is sought mainly on the ground that, there was error apparent and it may affect the decision of pending Change Reports before the concerned Assistant Charity Commissioner, Beed. He pointed out that, respondent No.2 on attaining majority has taken over the charge of Trust in question and he may cause serious damage of daily affairs of the Trust as he was wrongly appointed by the earlier Mathadhipati, who had already removed. He pointed out that, this Court should have directed the continuation of order of learned Joint Charity Commissioner, Beed in respect of looking after the affairs of Trust by respondent Nos.6 and 7 till the Change

Reports are decided instead of till attaining the majority by respondent No.2. He pointed out that, misuse of huge amount of Rs.28 lakhs belonging to Trust at the hands of respondent No.2 cannot be ruled out. According to him, the learned Assistant Charity Commissioner, Beed despite direction of Joint Charity Commissioner has not decided the pending Change Reports before him. Therefore, such modification is a dire need of the present situation of the Trust.

4. On the contrary, learned Counsel for respondent Nos.1 to 4 strongly opposed the submissions made on behalf of the applicants – original appellants on the ground that, the review is not permissible in the instant matter and the applicants should have approached to the Superior Court/Authority for challenging the judgment in these appeals. He pointed out that, clarification or modification as sought by the applicants under review application is also not permissible. Moreover, the intervenor in the aforesaid appeals cannot agitate the matter again by filing Review Applications, since he himself had not filed any appeal challenging the orders of learned Joint Charity Commissioner, Beed. In short according to him, second inning for re-arguing the matter is not

permitted. He produced on record certain documents showing that, respondent No.2 after attaining majority has also taken the charge of the Trust. As such, he prayed for rejection of all the Review Applications alongwith pending Civil Applications. Review Application Nos.162 and 163 of 2023 are also filed for the same purpose as claimed in Review Application Nos.93 and 94 of 2023. Besides his oral submissions he also relied upon following citations :

- (a) Hon'ble Supreme Court in the case of ***Parsion Devi and Ors. Vs. Sumitri Devi and Ors.***, in Civil Appeal No.5245 of 1997 reported in *(1997) 8 SCC 715*
- (b) Hon'ble Supreme Court in the case of ***S. Madhusudhan Reddy Vs. V. Narayana Reddy and Ors.***, in Civil Appeal No.5503 of 2022 reported in *AIROnline 2022 SC 1304*
- (c) Hon'ble Supreme Court in the case of ***Shri Ram Sahu (dead) Through Legal Representatives and Ors. Vs. Vinod Kumar Rawat and Ors.***, in Civil Appeal No.3601 of 2020 reported in *(2021) 13 SCC 1*

5. Heard rival submissions and also perused the documents on record. During the course of argument respective learned Counsel appearing for the applicants in all these Review Applications

claimed that, though the order of this Court is passed by considering all the aspects but this Court erred in keeping the order of learned Joint Charity Commissioner, Beed in respect of appointment of respondent Nos.5 and 6 as Administrators only till attaining the majority by respondent No.2. According to him, this Court should have modified that order and should have directed that the Administrators should continue their management till all the pending Change Reports before the learned Assistant Charity Commissioner, Beed are decided.

6. The Hon'ble Apex Court in the judgments relied upon by the respondent Nos. 1 to 4 in the cases of **Parsion Devi and Ors.** (*supra*) and **S. Madhusudhan Reddy** (*supra*) has discussed the scope of review and has made following observations in the aforesaid cases respectively :

(a) Parsion Devi and Ors. vs. Sumitri Devi and Ors. :

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”. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.

(b) S. Madhusudhan Reddy v. V. Narayana Reddy & Ors. :

The Court’s jurisdiction of review is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous

decision as against an error apparent on the fact of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction.

7. Further, similar observation is there by the Hon'ble Apex Court in the case of **Shri Ram Sahu (dead) Through Legal Representatives** (*Supra*). On going through the aforesaid observations of the Hon'ble Apex Court it appears that, the review filed on the ground that, there is a mistake or an error apparent on the face of record is not permissible, if such error needs to be detected by a process of reasoning and the same cannot be described as an error apparent on the face of record. In the instant case, during the course of argument the learned Counsel for all the review applicants contended that, there is a mistake on the face of record by not continuing management of Trust at the hands of respondent Nos.6 and 7 till deciding all the Change Reports pending before the learned Assistant Charity Commissioner, Beed. Their main grievance is that, respondent No.2 on attaining majority might misuse the funds of Trust. They have also agitated the basic appointment of respondent No.2 being illegal, since he is

appointed by the earlier Mathadhipati who had already removed by the review applicants. However, all these aspects are already dealt in the judgments under review and, therefore, considering the scope of review as discussed by the Hon'ble Apex Court in the judgments cited, the matter cannot be re-argued. Moreover, modification which the review applicants are seeking at this juncture is also not permissible since, the Hon'ble Apex Court in the case of **Shri Ram Sahu (dead) Through Legal Representatives** (*supra*) has clearly expressed that, *"even an erroneous order/decision cannot be corrected in the guise of exercise of review power"*. Thus, considering all these aspects and specially the scope of review as discussed by the Hon'ble Apex Court, I am of the opinion that, the powers of review cannot be exercised in the instant applications.

8. It is significant to note that, learned Counsel for respondent Nos.1 to 4 has produced on record certain documents indicating that, respondent No.2 has attained the majority on 28th June, 2023 and he has also taken the charge of Trust. Further, if the applicants are aggrieved by the inaction of learned Assistant Charity Commissioner, Beed, they can very well approach the

learned Joint Charity Commissioner, Beed for necessary direction to the concerned learned Assistant Charity Commissioner who flouted his directions under Clause – 9 of the order dated 3rd February, 2021, which reads as under :

“9. Assistant Charity Commissioner – 1, Beed is directed to expedite the pending change reports and other matters pertaining to present Trust and decide the same within the period of six months from the date of this order.”

So far as the pending applications in review application No.94 of 2023 namely Civil Applications Nos. 7755 and 10474 of 2023 are concerned, the same cannot be entertained since, I have come to the conclusion that, the Review Applications are not maintainable. Considering all these aspects of the aforesaid Review Applications alongwith the pending Civil Applications Nos. 7755 of 2023 and 10474 of 2023 of stand dismissed.

[SANDIPKUMAR C. MORE]
JUDGE