

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO.263 OF 2023
IN CRA/153/2023

Purshottam s/o. Laxmanrao Pawar,
Age 50 years, Occu. Business,
R/o. Hamalpura, Sadar Bazar,
Jalna

.. Applicant
(Original Petitioner,
defendant)

Versus

1. Vinitkumar s/o. Nandkishor Sahani,
Age 65 years, Occu. Business,
R/o. Vijay Garden, Old Jalna,
Tq. and Dist. Jalna
2. Ghanshyam s/o. Laxman Pawar,
(Since died through L.Rs)
- 2-A) Smt. Karuna w/o. Ghanshyam Pawar,
Age 50 years, Occu. Household,
- 2-B) Kum. Durgeshwari d/o. Ghanshyam Pawar,
Age 30 years, Occu. Household,
- 2-C) Digvijay s/o. Ghanshyam Pawar,
Age 29 years, Occu. Student,

Respondents No.2-A to 2-C are
R/o. N-4, C-45, Cidco, Aurangabad

- 2-D) Smt. Urmilabai w/o. Laxman Pawar,
(Since died, abated)

.. Respondents

(Respondent No.1-Original plaintiff
and Respondents No.2A to 2D
original defendants No.2A to 2D.)

Mr. Sudhir D. Kulkarni and Mr. Sanket S. Kulkarni, Advocate for
Applicant;

CORAM : S. G. MEHARE, J.

DATE : 26-10-2023

PER COURT :-

1. Heard the learned counsel for the applicant/tenant.
2. The landlord had filed a suit for eviction on various grounds, including *bona fide* requirements. The trial Court and first Appellate Court decreed the suit and ordered the eviction of the present applicant. Against the said Order a revision was filed before this Court. This Court dismissed the revision application on 28.08.2023. The present application has been filed to review the Order passed in Civil Revision Application No.153 of 2023, dated 24.08.2023.
3. At the outset, before the commencement of the arguments, this Court asked the learned counsel for the applicant, whether the facts he wanted to canvass before the Court were before this Court while deciding the revision application. He conceded and said that those were not the facts when the revision application was decided. He has also fairly conceded that those facts were not pleaded before this Court. These are purely the subsequent events.
4. The applicant seeks a review of the Order of this Court on the grounds that there were subsequent events. It barred the landlord from claiming eviction on the grounds of reasonable and *bona fide* requirement under Section 16(g) of the Maharashtra

Rent Control Act, 1999 (for short, "the Act"). As argued by the learned counsel for the applicant, the subsequent events were that the respondent/landlord had constructed 22496.55 Sq. Ft. Therefore, his *bona fide* need has been ceased.

5. The learned counsel for the applicant relied on the case of ***Amarjit Singh Versus Smt. Khatoon Quamarain, (1986) 4 Supreme Court Cases 736*** and read paragraphs No.12 to 14. It was a civil appeal before the Hon'ble Supreme Court. It has been held in paragraph No.12 that

"12. There is no dispute that subsequent events can be taken into consideration. There is no dispute that administration of justice demands that any changes either in fact or in law must be taken cognizance of by the Court, but that must be done in a cautious manner of relevant facts."

6. It has been observed in paragraph No.13 that "Pathak, J. reiterated that the High Court was bound to take the fact into consideration because, it is well-settled that in a proceeding for the ejectment of a tenant on the ground of personal requirement under a statute controlling the eviction of tenants, unless the statute prescribes to the contrary the requirements must continue to exist on the date when the proceeding was finally disposed of either in appeal or revision by the relevant authority. Therefore, subsequent events can be taken cognizance of if they are relevant

and material. In the instant case, the fact that the other flat in the premises fell vacant which the landlady could have occupied but she did not and let it out to fetch higher income, was a relevant factor. It can be taken cognizance of.”

7. While deciding that case, the fact of having two flats in the building in question was before the Court, and the landlady had already secured the eviction decree before filing the suit against the tenant.

8. He relied on the case of ***Gulabbai Versus Nalin Narsi Vohra and others (1991) 3 Supreme Court Cases 483*** and referred to paragraphs No. 25 and 29. The case was again a civil appeal before the Honourable Supreme Court. The facts of the said case were that the plaintiff had purchased suit premises. Before purchasing the premises, the tenant was occupying the premises. After purchasing the premises, the suit for eviction on various grounds, including *bona fide* requirements, was filed. The defendant/tenant had come up with a case that the need of the tenant was neither *bona fide* nor reasonable. The landlord was seeking the suit premises for her husband, who was an Income Tax and State Tax Practitioner and practising with another Practitioner as a partner. He also had his own office, and it was suitable for the plaintiff's husband to open his office there. Besides the suit premises, the plaintiff was in possession of a suitable area to open

the office. Under these premises, the ratio has been laid down. During pendency of the appeal, additional evidence was led that the plaintiff's husband, for whose *bona fide* requirement the suit premises was sought for, has purchased the another property, and this subsequent fact was brought before the first Appellate Court. However, the first Appellate Court dismissed the appeal of the tenant. Then, the matter went to the High Court. The High Court held that the subsequent relevant and admissible facts could be taken into consideration to come to a finding as to the reasonable and *bona fide* requirement of the landlord for passing a decree of eviction from the suit premises. The Hon'ble Supreme Court has discussed the decision of the Court for review. The Hon'ble Supreme Court confirmed the view of the High Court and dismissed the appeal. This was again on the fact that subsequent events were before the Court of Appeal before passing the judgment and decree.

9. He has relied on the case of ***P. V. Papanna and others Versus K. Padmanabhaiah, (1994) 2 Supreme Court Cases 316***. In this case, the ratio has been laid down that the personal need of the landlord must not only exist on the date of filing the eviction suit/petition but must also continue to exist during revision or appeal till the final decree or Order. The words 'during revision or appeal' are important.

10. He also relied on the case of ***Shiv Sarup Gupta Versus Dr. Mahesh Chand Gupta, (1999) 6 Supreme Court Cases 222***, and argued that the *bona fide* need ceases after the death of the person for whom the premises is sought vacated. On the said ground, he argued that the *bona fide* need must exist on the date of the final decision of the suit. In the said case, the wife and the mother-in-law of the landlord were dead. In these circumstances, it has been observed that events have hardly any bearing on the case of the felt need of the landlord.

11. He has relied on the case of ***Board of Control for Cricket, India and Ors. Vs. Netaji Cricket Club and Ors., MANU/SC/0019/2005 : (2005) 4 SCC 741***. Referring to the judgment, he has vehemently argued that the words 'sufficient reason' in Order XLVII, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*". He has referred to paragraph No.89 wherein it has been mentioned that

"Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason."

12. He would submit that the subsequent events are sufficient reasons to review the Order of this Court. He also referred to paragraph No.92 of the said judgment, in which the ratio was laid down in the case of ***Lily Thomas and Ors. v. Union of India and Ors., MANU/SC/0327/2000 : 2000 Cri L.J. 2433***, has discussed the dictionary meaning of the word "review". Relevant observations are reproduced thus;

“.. .. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error”

13. Relying on the above case law, he has vehemently argued that there are sufficient reasons to review the impugned Order. The facts of the case, as discussed above, were that when the revision was heard, neither there was a plea of subsequent events nor an application under Order XLI, Rule 27 of the Code of Civil Procedure (for short, "C.P.C.") for leading additional evidence was filed. For the first time the applicant is coming before the Court with additional material and asked this Court to review the Order to make a justice. This is a review application under Order XLVII, Rule 1 of the C.P.C. There are various pronouncements of the Hon'ble Supreme Court upon the scope and powers of the High

Court to review its own judgments.

14. The Hon'ble Supreme Court, in the case of **Col. Avatar Singh Sekhon v. Union of India and Others, 1980 Supp SCC 562**, observed that a review of an earlier order cannot be done unless the Court is satisfied that the material error is manifest on the face of the Order, would result in the miscarriage of justice or undermine its soundness. The observations are reproduced thus:

"12. A review is not a routine procedure. Here, we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier Order unless satisfied that material error, manifest on the face of the Order, undermines its soundness or results in miscarriage of justice."

15. In **Sow.Chandra Kante and Another v. Sheikh Habib, (1975) 1 SCC 674**, the Hon'ble Supreme Court observed :

"12. A review is not a routine procedure. Here, we "A review of a judgment is a serious step, and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ... The present stage is not a virgin ground but a review of an earlier order which has the normal feature of finality.'" (emphasis added)

16. In **Parsion Devi and Others v. Sumitri Devi and Others, (1997) 8 SCC 715**, it has been held that an error

that is not self-evident and one that has to be detected by the process of reasoning cannot be described as an error apparent on the face of the record for the Court to exercise the powers of review.”

17. The law, as regards the scope and ambit of Section 114 read with Order XLVII, Rule 1 of the C.P.C., has been discussed by the Hon'ble Supreme Court in various cases, and the law has been laid down that review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

18. In a recent pronouncement of the Hon'ble Supreme Court in the case of ***S. Madhusudhan Reddy v. Narayana Reddy and others, 2022 LiveLaw (SC) 685***, the law has been laid down which reads thus;

"Under Order XLVII, Rule 1 of the C.P.C., 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 that 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 XLVII, Rule 1 of the C.P.C. In the exercise of this jurisdiction under Order XLVII, rule 1 of the C.P.C., 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'".

19. The facts of this, as discussed, it is clear that whatever material the applicant wanted to produce was not before the Court while passing the judgment. The rule is that the Court has to consider the material produced before it. On the basis of evidence, the Court has to appreciate the fact and apply the law. The Court cannot travel beyond the record. If anything is available on record and not considered and such material is having an impact on the judgment, that may be a circumstance to review the judgment. Even if the subsequent events or any evidence could not be produced before the Court during the trial, an opportunity may be availed to exercise the rights under Order XLI, Rule 27 of the C.P.C. in an appeal. This is also not the case that before the judgment, any such application was filed before the Appellate Court. This Court had decided the matter on the basis of material which was available before it. If the grounds for review as argued before this Court are allowed, it would be re-opening of the conclusion arrived at by the judgment. The learned counsel for the applicant did not point out the patent error committed by this Court while passing the Order under review. The application is not within the purview of Section 114 and Order XLVII, Rule 1 of the C.P. Hence, the review application stands dismissed at the admission stage.

20. Learned counsel for the applicant prays that the execution of decree be stayed for eight weeks. No prayer as such was made when the order impugned before this Court.

21. Considering the facts of the case, this Court is of the view that this is not a fit case to stay the execution of judgment and decree.

(S. G. MEHARE)
JUDGE

rrd