

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION NO.71 OF 2023
IN
WRIT PETITION NO.5678 OF 2015**

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The new India Assurance Company Ltd. ... Petitioner

V/s.

The Board of Trustees of the Port of
Mumbai. ... Respondent

Mr. V. Y. Sanglikar, for Petitioner.

Mr. Prasad Dani, Senior Advocate a/w Mr. Rahul Jain
& Mr. Mahaprin Mehta i/by HSA Advocates, for
Respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 20, 2023

P.C.:

1. The petitioner is seeking a review of the order dated 3 May 2018 passed by this Court in Writ Petition No.5678 of 2015. The writ petition arises out of proceedings under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

2. The Estate Officer had framed nine issues while allowing the applicant's claim. The nine issues are as follows:

1. Whether the premises in petition are public premises within the meaning of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ?

2. Whether this Hon'ble Authority has jurisdiction to entertain and try the Petition ?
3. Whether the petitioners prove that the respondents have committed breaches of the agreement for the reconstruction of the building on the plot of land in which the building was destroyed by fire ?
4. Whether the petitioners prove that the respondents in respect of premises in petition has been validly terminated by service of notice to quit dated 12.10.2001 ?
5. Whether the petitioners prove that the respondents are unauthorised occupants in respect of premises in petition ?
6. Whether the respondents prove that the petitioners were bound to extend / renew / reinstate the lease in respect of premises in petition ?
7. Whether the petitioners are entitled to recover from the respondents arrears of compensation and other charges as per particulars mentioned in exhibit B to the petition or any other sum as per judgment of Hon'ble Supreme Court dated 13.10.2004 ?
8. Whether the petitioners entitled to recover from the respondents mesne profits as per judgment of Hon'ble Supreme Court dated 13.01.2004 ?
9. Whether the petitioners are entitled to recover from the respondents premises in petition ?

3. The present opponent challenged the said order by way of Miscellaneous Appeal No.56 of 2008. The submissions advanced on behalf of the appellant are specifically recorded in paragraph 2 of the judgment dated 12 December 2014.
4. The Principal Judge, City Civil Court, by order dated 12 December 2014, allowed the appeal and set aside the estate officer's order.
5. The opponent filed Writ Petition No.5678 of 2015. This court, by reasoned judgment, allowed the writ petition. While allowing the writ petition, this court specifically recorded submissions of the review petitioner in paragraph 7 of its judgment.
6. The petitioner challenged the order of this court before the Supreme Court. The SLP was dismissed on 20 August 2018.
7. The petitioner has, therefore, filed a present review petition.
8. According to the petitioner, the Estate Officer framed nine issues. According to him, except considering the issue of applicability of judgment of Apex Court in the case of **Suhas H. Pophale vs. Oriental Insurance Co. Ltd.**, reported in 2014 (4) SCC 657, no other point has been adjudicated by the Appellate Authority or Single Judge of this Court. According to him, therefore, apart from the applicability of judgment in the case of **Suhas H. Pophale** (Supra), other issues, including quantification of damages, needed adjudication. Failure to adjudicate on other points out of nine points framed by the estate officer, including justiciability of damages by a Single Judge of this Court, raises

ground of "error apparent on the face of record".

9. Per contra, the learned Senior Advocate for the original petitioner invited my attention to the submissions recorded by the Appellate Authority in paragraph 2 of its judgment dated 12 December 2014 and to paragraph 7 of the judgment of the Single Judge of this Court. According to him, the applicability of the judgment in the case of **Suhas H. Pophale** (Supra) was the only submission made on behalf of the review petitioner before the First Appellate Authority and learned Single Judge. Therefore, the First Appellate Authority and the Single Judge of this Court were not obliged to consider any other issues except the applicability of the decision of **Suhas H. Pophale** (Supra).

10. To counter this, the learned Advocate for the petitioner submitted that the First Appellate Authority and Single Judge were obliged in law to adjudicate all crucial issues framed by the estate officer, including justiciability of damages. The obligation to adjudicate all such issues is an obligation cast on the First Appellate Authority and Single Judge of this Court in law. According to him, it is implicit, considering grounds raised in the appeal memo and writ petition, that the review petitioner had raised such grounds in their memo of the petition and, therefore, the First Appellate Authority and Single Judge were obliged to adjudicate on all the including issue of damages.

11. I have heard learned Counsel for the parties and perused the material on record.

12. The scope of power of this Court under Order 47, Rule 1 has

been delineated by the Apex Court in the case of **Meera Bhanja v. Nirmala Kumari Choudhury**, (1995) 1 SCC 170.

“8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this court, in the case of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [(1979) 4 SCC 389 : AIR 1979 SC 1047] , speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

“It is true, as observed by this Court in *Shivdeo Singh v. State of Punjab* [AIR 1963 SC 1909] , there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power, which may enable an appellate court to correct all manner of errors committed by the subordinate court.

13. In light of the above parameters, I have considered the submissions of parties. The point which requires adjudication in this review is whether the court is obliged to adjudicate on all

issues in the absence of submissions made and recorded during the course of the argument. In my opinion, the court is required to adjudicate only those issues which are raised specifically by parties during the course of arguments.

14. On perusal of paragraph 2 of the Appellate Authority's judgment and paragraph 7 of the judgment of the Single Judge of this Court, it is clear that submissions regarding all other points, including justiciability of damages not argued either before the First Appellate Court or before Single Judge of this Court. In the absence of such submissions being recorded in the judgment, it is not open for the parties to raise such grounds in the review petition.

15. It was expected from such review petitioner to move the court immediately after delivery of judgment to record a submission which, in fact, was made but not recorded in the order. However, no such attempt was made by the petitioner even after the delivery of the judgment of the Single Judge of this Court on 3 May 2018. Moreover, without filing such an application, the review petitioner filed an SLP before the Apex Court, which was dismissed.

16. On perusal of the grounds in the present review petition, the petitioner has not raised a ground that such submission was made before the Single Judge of this Court or before the First Appellate Authority. No grievance is made in the review petition that apart from the applicability of the judgment of **Suhas H. Pophale** (Supra), the petitioner had made submissions before this court,

and such submissions are inadvertently not referred by the Single Judge of this Court in its judgment.

17. In the absence of such factual ground being raised in the review petition, it is not open for the review petitioner to raise the ground regarding failure to adjudicate relevant issues.

18. The law on the point of happenings from the court is clear. If really there was such submissions made, the only course open to the petitioner was to move this court in line with what has been said in **State of Maharashtra v. Ramdas Shrinivas Nayak**, (1982) 2 SCC 463 that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in the court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judge who has made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there.

19. In the absence of such an application being made before the Single Judge of this Court, no fault can be found with the judgment of this court on the point of failure to adjudicate the rest of the issues framed by the estate officer, including justiciability of damages. Therefore, in my opinion, in the absence of filing such an application before the Single Judge of this Court or raising ground in the review petition, the failure to adjudicate on the justiciability

of damages cannot be termed as an 'error apparent on the face of record'. Hence, there is no merit in the review petition.

20. The review petition is, therefore, dismissed.

(AMIT BORKAR, J.)