

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.70 OF 2022
IN
WRIT PETITION NO.10975 OF 2018

Sanjay Ramchandra Shendkar & .. Petitioners
Ors. (Orig. Plaintiffs)

Versus

Narayan Antu Zende & Ors. .. Respondents
(Orig. Defendants)

...

Mr.Sarthak S. Diwan for the Petitioners

Mr.Dormaan J. Dalal for the Respondent No.18.

...

CORAM: BHARATI DANGRE, J.
DATED : 12th APRIL, 2023

P.C:-

1. By judgment dated 17/03/2022, the writ petition filed by the petitioners, was dismissed by upholding the impugned order directing the plaintiffs/petitioners to pay the court fee in accordance with Section 6(iv)(ha) of the Maharashtra Court Fees Act.

2. The question that fell for consideration before me was, whether a suit filed by the plaintiffs, seeking declaration and perpetual injunction, will attract the court fee in terms of Section 6(iv)(ha) or the fee is to be charged under Section 6(iv)(j) of the Maharashtra Court Fees Act.

The above question arose in the backdrop of the fact that the suit property, being the agricultural property described in the plaint, was pleaded to be the ancestral property and it was the contention of the plaintiffs that defendant No.18 prepared a fraudulent unregistered document titled as, 'power of attorney', the execution of which is disputed by the plaintiffs. It was alleged that on the basis of this power of attorney, the distinct parts of the property were disposed of through various sale deeds in favour of the defendants and, therefore, a suit was filed, praying for a declaration that all the sale deeds, executed in pursuance of power of attorney by defendant No.18, are not binding on the plaintiffs and the sale deed executed in favour of defendant Nos.1 to 17 and in favour of defendant Nos.19 to 76 be declared as null and void.

3. On considering the various authoritative pronouncements and by appreciating the pleadings contained in the suit, a conclusion was drawn that the plaintiffs had specifically prayed for injunction on the sale deed executed on the basis of the alleged fraudulent power of attorney, which was prayed to be not binding upon the plaintiffs, who specifically sought its avoidance as being void, and, therefore their case fall within the ambit of Section 6(iv)(ha).

4. The above judgment dated 17/03/2022 was assailed through a Special Leave to Appeal (C) No(s).9176/2022 and on 18/07/2022, Their Lordships passed the following order :-

“Learned Counsel for the petitioners submits that in view of the order dated 05.05.2022 passed in Writ Petition 8968/18 (placed on record with application for permission to file additional documents), liberty be granted withdraw the present petition, with further liberty to prefer application for review.

Liberty as prayed for is granted.

The Special Leave Petition is dismissed as withdrawn.”

5. The Special Leave to Appeal was withdrawn, with liberty to prefer an application for review in the wake of the decision of the Division Bench, rendered on 05/05/2022 i.e. after the declaration of my judgment on 17/03/2022. The Division Bench answered the reference made over to it on the following issue.

“What is the court fee payable in regard to a suit for declaration that the sale deed, to which the Plaintiffs are not privy/party is void and not binding on the Plaintiffs, and for consequential relief of injunction?”

The reference came to be answered in paragraph 26 of the said judgment as under :-

“26. In view of the above, answer to the reference is that the court fee payable in regard to a suit for declaration of the sale deed to which the Plaintiff is not a party to the sale deed binding on him and for consequential injunction would be governed by Section 6(iv)(j) of Maharashtra Court Fees Act.”

6. The question that arises for determination before me is, whether passing of subsequent judgment by a higher court (Division Bench) would be a ground for entertaining a Review Petition. The provision for review as contained in Order XLVII Rule 1 reads thus :-

1. Application for review of judgment- (1) Any person considering himself aggrieved,-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[*Explanation.*-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

7. The Explanation appended to the provision clearly stipulate that, a decision on a question of law, being reversed or modified by a subsequent decision of a higher Court, in any other case, shall not be a ground for review of the judgment.

8. The foremost ground for filing of Review Petition and entertaining the same is, the order of which review is sought, suffers from an error apparent on the face of the record and in

absence of any such error, finality attached to the judgment/order cannot be disturbed. In *Beghar Foundation through its Secretary v. Justice K.S.Puttaswamy*¹, it is specifically held that a review petition cannot be entertained on the ground of “change in the law or subsequent decisions/judgment of a Larger Bench”.

In plethora of judgments delivered by the highest court of Country as well as distinct High Courts, including the Bombay High Court has consistently taken a view that there is no reason for reviewing a decision on the ground that the judgment sought to be reviewed was overruled in another case. Thus, a subsequent judgment taking a different point of view, is never considered to be a ground for review in view of the explanation appended to Section XLVII Rule 1 of C.P.C.

It is well settled principle that review is, by no means an Appeal in disguise, whereby an erroneous decision is corrected, but it lies only for patent error, without any elaborate argument that one could point to the error and, therefore, before exercising the power for review, error apparent on the face of record, must be established. The error should be so striking that on a mere looking it is spotted and it would not require any long drawn process of reasoning.

9. This being the settled position of law all the while, recently the Apex Court was confronted with the explanation appended to Order XLVII Rule 1, where review petitions were filed under Article 137 of the Constitution of India read with Section 37 of CPC, seeking review and recall of orders passed

¹ (2021) 3 SCC 1

in respect of Civil Appeals in dismissing/disposing off the same and seeking its restoration to consider the same on merits.

While dealing with the provisions of Order XVIII Rule 1 and the explanation appended thereto, coupled with Article 137 of the Constitution, two divergent views were expressed, the first coming from Hon'ble Justice M.R.Shah and the second, through the judgment of Hon'ble Justice B.V.Nagarathna.

Hon'ble Justice M.R.Shah prefixed his reasoning with the following observations :-

“20. It is further submitted by the learned counsel appearing for the respective respondents that even otherwise none of the conditions enumerated under Order 47 Rule 1 CPC and Order 47 of the Supreme Court Rules are satisfied. That the review petitions are filed under Article 137 of the Constitution r/w Order 47 of the Supreme Court Rules. That Article 137 states that "subject to the provisions of any law made by Parliament or any rules made under Article 145", this Court shall have power to review its decision. It is submitted that Order 47 of the Supreme Court Rules states that "no application for review will be entertained in a civil proceeding except on the ground mentioned in Order 47 Rule 1 CPC. That Order 47 Rule 1 CPC states that a review petition may be preferred on the following grounds,

(a) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him, OR

(b) order made, or on account of some mistake or error apparent on the face of the record, OR

(c) for any other sufficient reason.”

In the facts of the case, Their Lordship concluded by recording as under :-

“29. Now so far as the submission on behalf of the respective respondents that the case does not fall under Order 47 CPC and that the subsequent overruling cannot be a ground to review the earlier order(s) is concerned, at the outset, it is required to be noted that here is a peculiar case where the earlier decision in the case of *Pune Municipal Corporation* (supra), upon which reliance has been placed earlier, was itself doubted in the subsequent decision in the case of *Indore Development Authority* (supra) and that the matter was referred to the Constitution Bench and thereafter the Constitution Bench has declared the law as above, more particularly paras 365 and 366 of the judgment in the case of *Indore Development Authority* (supra). It is also required to be noted that in most of the cases solely relying upon the earlier decision in the case of *Pune Municipal Corporation* (supra) and though the possession of the lands in question have been taken over and in many cases it might have been utilised/used by the beneficiary authorities, orders are passed declaring the deemed lapse of acquisition. The resultant effect would be to return the possession of the land/s which might have been used by the beneficiary authorities. Therefore also in the larger public interest, the review applications are required to be allowed and the respective appeals are required to be considered and decided afresh. Therefore, in the facts and circumstances of the case, these are the cases where the review applications are to be allowed and the appropriate public authorities are to be given an opportunity to put forward their case afresh, which shall be in the larger public interest.

10. Another view expressed by Hon’ble Justice Nagarathna, the question came to be crystallised as under :-

“50. ...The pertinent question involved in this case is, whether, the judgment in *Pune Municipal Corporation* having been overruled and all other judgments following *Pune Municipal Corporation* having been overruled in *Indore Development Authority*, would call for review of all those judgments despite having attained finality between the parties. In other words, whether, on the basis of a subsequent decision, on a pure question of law, the earlier decisions arrived at, on the basis of law as it was, could now be recalled at the instance of one of the parties to the earlier decisions.”

After due deliberation of the term “decision” in legal context, the scope of the explanation was vividly discussed with reference to the principles of statutory interpretation. The terminology “sufficient reason”, as applied in order XLVII Rule 1 of CPC, was also dissected and the decision of the Hon’ble Apex Court in *Moran Mar Basselios Catholicos Vs. Most Rev. Mar Paulose Athanasius*², was relied upon to constitute the impression “any other sufficient reason” to mean, “a sufficient reason on grounds, at least analogous to those specified in the Rule.” A catena of decisions of the highest Court were relied upon, which had interpreted the scope of Order XVIII Rule 1 in reference to the terminology, “for any other sufficient reason”. The pertinent observation on the facts of the case was answered in the following paragraphs :-

78. In fact, in *State of Haryana v. G.D. Goenka Tourism Corporation Corporation Ltd.*, (2018) 3 SCC 585, this Court directed that pending a final decision on making a reference to a Larger Bench on the interpretation of Section 24 of the L.A. Act, 2013, the High Courts ought not to deal with any case relating to the said interpretation. Therefore, between 21.02.2018 till the date of pronouncement of the judgment by the Larger Bench in *Indore Development Authority* i.e., 06.03.2020, the High Courts were requested not to deal with cases arising under Section 24(2) of the L.A. Act, 2013, and its applicability to acquisition arising under L.A. Act, 1894, i.e. only insofar as acquisition initiated under L.A. Act, 1894. But insofar as cases which were decided prior to the aforesaid directions issued by this Court or the High Court or cases decided even by this Court on the strength of the dictum in *Pune Municipal Corporation* cannot be set at naught between the parties to those cases. The judgment in *Pune Municipal Corporation* having been overruled, it would only lose its value as a precedent subsequent to the dictum of the Larger Bench in *Indore Development Authority* and therefore, cannot be cited as a precedent.

2 AIR 1954 SC 526

79. Hence, in my view, having regard to the scope and ambit of the Explanation to Order XLVII Rule 1 of CPC, these review petitions are not maintainable and the judgment and the orders of this Court ought not to be reviewed and the review petitions are liable to be dismissed.”

It was held by Hon’ble Justice Nagarathna that the judgments/orders sought to be reviewed by the petitioner is impermissible in law also, since the ground realities would be taken into consideration on account of passage of time.

11. With the two divergent opinions appearing through the said decision, request is made to the Hon’ble Chief Justice of India to make reference for referring the divergent opinion to a Larger Bench.

12. Unraveling the position of law that flows through various authoritative pronouncements and, since as far as the Apex Court is concerned, there is cleavage of opinion about the scope of Explanation appended to Order XLVII Rule 1, which would be duly settled by the Larger bench of the highest court of the Country, I do not find that the existing position of law permit review of my decision, in the wake of a subsequent Division Bench decision, which has taken a different turn. Hence, Review Petition can not be entertained and the same is dismissed.

(SMT. BHARATI DANGRE, J.)