

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.3 OF 2023
IN
FAMILY COURT APPEAL NO.95 OF 2015

Dr. Manish Bapurao Ganvir.

...Petitioner

Versus

Dr. Sangita Manish Ganvir

...Respondent

—————
Mr. Chandrakant Joshi i/b Mr. Bhushan Joshi for the Petitioner.

Mr. Kunal Patel i/b R. V. Sankapal & Associates for the Respondent.
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**Coram : Nitin W. Sambre &
Sharmila U. Deshmukh, JJ.**

Date : 8th November, 2023.

P. C. :

1. Review is sought of the order dated 10th July, 2023 dismissing the Interim Application No. 18678 of 2022 of the Petitioner seeking modification of the order dated 10th April, 2019 passed in Civil Application No. 291 of 2018
2. Heard Mr. Joshi, learned counsel for the Petitioner and Mr. Patel, learned counsel for the Respondent.
3. Mr. Joshi, learned counsel for the Review Petitioner submits that there is error apparent on face of the record. According to him, the issue of maintainability of the modification Application has not been

considered in proper prospective as the provisions of Section 25(2) of the Hindu Marriage Act, 1956 and Section 23 of the Hindu Adoption and Maintenance Act, 1956 permits seeking modification due to change of circumstances. He points out that there has been a change of circumstances as the order of 10th April, 2019, of which modification was sought was passed on the basis of assumption of rupee devaluation and with passage of time, the income was presumed to have been enhanced. He would further submit that the income of the Review Petitioner as per income tax returns for the year 2019-20 has reduced as compared to the income of the year 2016-17. He would further submit that the Respondent Wife has filed only Form 16 and has not filed her income tax returns / profit and loss account and as such, has not disclosed her income.

4. According to him, the Respondent wife has no intention of giving access of the children to the Review Petitioner and the decision of the Apex Court, in the case of *Ajay Kumar Rathee vs Seema Rathee*, [2023 (3) ALT 69,] is clearly applicable. He would submit that the children have refused to maintain any relationship with the father and as such, he is not liable to pay maintenance. According to him, the decision of the Apex Court in the case of *Ajay Kumar Rathee* (supra)

and order of Co-ordinate bench of this Court is binding on this Court.

5. *Per contra*, Mr. Patel, learned counsel for the Respondent submits that no ground for review is made out and all the submissions have been considered and dealt with by the order under review. He further submits that the Special Leave Petition preferred against the order of 10th April 2019, has been dismissed by the Apex Court on 31st January, 2020 and tenders the copy of the order of the Apex Court dated 31st January, 2020 passed in Special Leave Petition (Civil) Diary No (s). 30279/ 2019.

6. We have considered the submissions and perused the order under review.

7. Interim Application No. 18678 of 2022 sought modification of the order dated 10th April, 2019 passed by this Court in Civil Application No. 119 of 2016 in the present Family Court Appeal. The Special Leave Petition preferred against the order of 10th April, 2019 has been dismissed by the Apex Court.

8. The arguments of Mr. Joshi seeks to canvass the same submissions which were advanced at the time of the initial hearing of the Interim Application which were considered and dealt with by this Court in the order under review. Paragraph No. 3 of the order under review

records that the learned counsel for the Applicant has not been able to demonstrate any change of circumstances which would warrant modification of the order dated 10th April, 2019. In paragraph No. 4, this Court has noted the submission as regards the issue of non access of the child and dealt with the same. In paragraph No. 6 of the order, this Court has dealt with the submission of the learned counsel of the Applicant as regards the income of the Respondent wife.

9. As regards the decision of the Apex Court in the case of ***Ajay Kumar Rathee*** (supra), this Court has held that the decision is distinguishable as the facts differed. It cannot be disputed that, even the obiter of the Apex Court is binding upon this Court. However, with utmost respect we do not read the observation as laying down an absolute proposition of law that if the child is reluctant to meet the father, the child is not entitled to maintenance.

10. The submissions of the learned counsel for the Applicant is nothing but rehash of the earlier arguments advanced and rejected. Each of these arguments have been dealt with by this Court by its order dated 10th July, 2023. The submissions of the learned counsel for the Applicant can at the best be termed as one challenging the order under review as erroneous and it is settled that review cannot be granted on

the grounds that the decisions is erroneous.

11. It needs to be noted that there is difference between an erroneous decision and error apparent on record. The submissions canvassed for seeking review are in the nature of appeal against the decision perceived as erroneous by the Review Petitioners. Review cannot be treated as an appeal and rehearing of the matter is not allowed. The provisions of Order 47 Rule 1 of CPC which provides for review were considered by Division Bench of this Court in the case of **Radhakrishna O-operative housing Society Ltd. Vs. State of Maharashtra** reported in **2018(6) ALL MR 664**. After noting various decisions of the subject, the Division Bench of this Court held that the power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. The Court further held that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

12. Having regard to the discussion above, no grounds for review is being made out. Review Petition stands dismissed.

[Sharmila U. Deshmukh, J.]

[Nitin W. Sambre, J.]