



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.78 OF 2023
IN
WRIT PETITION NO.2459 OF 2023

Vijay L. Pawar and Anr.

... Petitioner.

Versus

Brihanmumbai Municipal Corporation and Ors.

... Respondents.

Mr. Mayur Khandeparkar a/w Mr.Vijaykumar Kamble, Mr.Shriniwas Singh, for the Petitioner.

Mr. R.Y. Sirsikar for Respondent Nos.1 to 6-MCGM

Mrs.Nandini Joshi, Mr.Dhruv Joshi and Ms.Preeti Agarwal i/by Harish Joshi & Co. for Respondent No.9.

Mr. Sleeve J. Pulikkadan for Respondent No.11.

Mr.Manish Gala i/by Mr. Nilesh Gala i/by Law Square for Respondent Nos.12 and 14.

Mr. S.D. Rayrikar, AGP for Respondent No.15.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : November 04, 2023.

P. C. :

1. Heard.

2. Review is sought of the order dated 20th July, 2023 passed by this Court in Writ Petition No.2549 of 2023 dismissing the Petition.

3. Learned counsel appearing for the Review-Petitioner canvassed two submissions for seeking review, firstly that the legal

submission canvassed at the time of hearing the Petition was not considered and secondly that the petition has been rejected by taking into consideration the subsequent events as far as the filing of the suit before this Court is concerned. According to him, at the time of hearing of the Petition the legal submission advanced was that the application for withdrawal could not be partly allowed and that the Court ought to allow or reject the Application. He seeks to tender decisions of this Court, which according to him, supports the submission which was advanced at the time of hearing of the Petition.

4. Considered the submissions.

5. The Petition was filed challenging the order dated 19th December, 2022 passed by the City Civil Court, by which the Trial Court granted permission to withdraw the Suit unconditionally but no liberty was granted to file fresh suit. By the order under review this Court dismissed the Petition. The order is sought to be reviewed on the ground that the legal submission has not been dealt with by this Court and secondly that the Petition was dismissed by considering subsequent events. It needs to be noted that the order was dictated in open court in presence of the parties.

6. I have gone through the order dated 20th July, 2023 passed

in the Petition. After considering the provisions of Order 23 Rule 3 of CPC and the application filed before the Trial Court Petitioner seeking withdrawal, it was held that in the absence of sufficient reasons the Trial Court was well justified to permit withdrawal of the suit unconditionally but refused to grant leave as prayed. The submission of the learned counsel for Petitioner was therefore dealt with by holding that it was justifiable for the Trial Court to permit withdrawal and refuse the liberty.

7. As regards the decisions on which reliance is now sought to be placed by the learned counsel for the Review Petitioner, I am not inclined to take the same on record for the reason that the decisions were not tendered at the time of the hearing of the Writ Petition and considering the same at this stage would amount to re-hearing of the Writ Petition. The order under review dated 20th July, 2023, indicates that the parties were heard at length and no decisions were relied upon to substantiate the submission at the time of the hearing. Merely by change of the counsel there cannot be any re-hearing based on decisions not produced at the time of the initial hearing. As regards the second submission that the Petition had been dismissed by taking into consideration the subsequent events, the submission at the best can be termed as one challenging the order under review as

erroneous and it is settled that review cannot be granted on the ground that the decision was erroneous.

8. 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 Co-operative Housing Society Ltd. Vs. State of Maharashtra*** reported in ***2018(6) ALL MR 664***. After noting various decisions on 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 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.

9. The Review-petitioner seeks rehearing of the proceedings by seeking to justify the arguments made in the hearing of the Petition

by placing reliance on relevant decisions which could have been and were not tendered at the time of hearing of the Petition. The findings which have been reached at by this Court were after hearing the parties at length. No grounds for review is being made out. Review Petition stands dismissed.

(Sharmila U. Deshmukh, J.)