



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 93 OF 2023
IN
WRIT PETITION NO. 11034 OF 2023

Arvind Keshav Aherrao

...Petitioner

Versus

Omkarswarup Sahakari
Grihrachana Sanstha Maryadit
through its Administrator & Ors.

...Respondents

Mr. Nitin P. Deshpande (through VC), for the Petitioner.

Mr. S. D. Rayrikar, AGP, for the State/Respondent.

CORAM : MADHAV J. JAMDAR, J.

DATED : 31st OCTOBER 2023

P.C.:

1. Heard Mr. Nitin P. Deshpande, learned counsel appearing for the Petitioner and Mr. S. D. Rayrikar, learned AGP, appearing for the State.

2. By order dated 5th September 2023, this Court by giving reasons has dismissed the Writ Petition. In the Review Petition, it is the contention of Mr. Deshpande, learned counsel appearing for the Petitioner that the only reason given is that the two Courts have passed the order against the Petitioner and therefore, the Writ Petition is dismissed. It is his submission that although order has been

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passed directing the Respondents to produce the documents, the documents are not produced and therefore, application Exhibit-96 for striking of defence was filed and no order has been passed on said application. It is also his contention that by letter dated 15th July 2009, the Deputy Registrar, Co-operative Societies had directed the Respondents to comply with certain requirements and the same is also not considered.

3. This Court by order dated 5th September 2023 *inter alia* set out the reasons for dismissing the Writ Petition in paragraph Nos.2, 3 & 4, which read as under:-

“2. The Petitioner is one member of the Respondent No.1-Society. The Petitioner by filing Appeal No.76 of 2022 challenged the legality and validity of the Judgment and Award dated 22nd August 2022 passed by the learned Judge, Co-operative Court No.1, Pune in Dispute No.184 of 2011. By the impugned order dated 6th June 2023, learned Member, Maharashtra State Co-operative Appellate Court Mumbai, Bench Pune dismissed the said Appeal No.76 of 2022 arising out of Judgment and Award dated 22nd August 2022 passed by the learned Judge, Co-operative Court No.1, Pune in Dispute No.184 of 2011. The said dispute is dismissed by the Judgment and Award dated 22nd August 2022

passed by the learned Judge, Co-operative Court No.1, Pune. In the said dispute, the Petitioner has challenged the resolution passed by the Society, by which, membership has been allotted to the Respondent No.6.

3. It is the contention of learned counsel appearing for the Petitioner that as per bye-laws of the Society, the premises occupied by member has to be transferred in favour of other member and not the third person. He further states that the Petitioner is interested in purchasing the flat in question which was acquired by the Respondent No.6 who is not the member of the Society, however, the Society has accepted membership of the Respondent No.6.

4. Both the authorities have held that the Society has passed the resolution in legal manner. Therefore, this is not a case where, interference by this Court under Article 227 of the Constitution of India is warranted.”

(Emphasis added)

4. It has been set out in the order under review that only one member has challenged the resolution passed by the society, by which membership has been allotted to the Respondent No.6. As the society has passed the resolution by overwhelming majority, this Court has

held that no interference under Article 227 of the Constitution of India is warranted.

5. The contentions raised in the Review Petition are not raised at the time of hearing the Writ Petition. Therefore, no ground is made out to review the said order.

6. The Supreme Court in the case of **Sanjay Kumar Agarwal vs. State Tax Officer (1) & Anr.**¹ has after considering various decisions has culled out the principles to review the order. The said paragraph 16 reads as under:-

“16. The gist of the afore-stated decisions is that:—

(i) A judgment is open to review *inter alia* if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) An error which 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 record justifying the court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be

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“reheard and corrected.”

(v) A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise.”

(vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.”

7. This case does not fall in any of the above parameters.

Therefore, no ground is made out to review the said order.

8. Accordingly, the Review Petition is dismissed however, with no order as to costs.

[MADHAV J. JAMDAR, J]