



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**MISC. CIVIL APPLICATION NO.442 OF 2023 IN
CIVIL APPLICATION NO.1311 OF 2022 IN
FIRST APPEAL (ST.) NO.8742 OF 2022**

1. Sulochana w/o Gangadhar Patil
Aged about 79 years,
Occupation – Agriculturist,
R/o Wani, Tah. Dindori,
District Nashik
At present R/o Wardha,
Tah. & District Wardha
2. Shri Dongar s/o Deorao Bhangale,
Aged about 80 years,
Occupation – Agriculturist,
At present R/o Chinawal,
Tq. Rawer, District Jalgaon
3. Smt. Gayabai @ Gangabai wd/o
Keshaorao Choudhari(Deleted)
4. Smt. Malati wd/o Dongar
Bhangale.....(Dead)
5. Shri Waman s/o Sitaramji
Patil..... (Deleted)

...APPLICANTS

VERSUS

1. The State of Maharashtra,
through Collector, Wardha
2. The Special Land Acquisition Officer,
(General), Wardha
3. Municipal Council,
through Chief Officer,
Wardha

...NON-APPLICANTS

Mr. Parth Lalit Sagdeo, Advocate for the applicants.
Mr. M.I. Dhatrak, Advocate for respondent No.3.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : SEPTEMBER 08, 2023.
PRONOUNCED ON : OCTOBER 06, 2023

JUDGMENT (PC) :

Heard.

2. Present application has been filed by the applicant in Civil Application No.1311 of 2022 for review of certain observations in the judgment and order passed by this Court in the said application on 20/03/2023. Present application for review is filed on the ground that this Court has passed the order in the delay condonation application and rejected the application of the applicants. The grievance of the applicants is that they are the owners of agricultural land bearing Survey No.1/2 admeasuring 0.52 H.R. at Mouza Palakwadi, Wardha which was acquired by the State Government for and on behalf of the Municipal Council, Wardha vide Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act' for short) dated 14/11/1985. The Land Acquisition Officer vide its Award dated 05/08/1988 awarded total compensation of Rs.1,12,320/-.

3. Being aggrieved with the Award of the Land Acquisition Officer, the applicants had filed reference application before the trial Court and claimed the compensation @ Rs.70/- per square feet for 0.52 H.R. i.e. 55948 square feet vide L.A.R. No.39/1991. On 11/04/2007, the reference Court has granted compensation @ Rs.4/- per square feet for 0.52 H.R. land.

4. Being aggrieved and dissatisfied with the said judgment and Award, respondent No.3 – acquiring body had preferred First Appeal No.638/2007 which came to be decided and the appeal was dismissed on 20/02/2019. The applicants preferred the appeal along with the delay condonation application. Same was rejected by this Court on 20/03/2023 on the ground that the applicant had approached to this Court in 2020 seeking withdrawal and secondly the applicants had contested First Appeal No.638/2007 filed by the acquiring body.

5. It is the contention of the applicants that the delay in preferring the first appeal was caused due to the negligence on the part of the Advocates. The applicants have engaged local Advocate Mr. G.K. Nagre who was practising at Nashik and handed over the entire papers to him. He handed over the said papers to the Counsel at Nagpur. The Counsel at Nagpur had prepared cross-objection and the application for

grant of exemption from court-fees for filing the cross-appeal. The Power of Attorney holder had sworn the application for delay and the cross-objection on 11/02/2009. The applicants were under bonafide impression that their Counsel had filed the cross-objection with the application of exemption of court-fees, however the same was not acted upon by their Counsel. This Court by judgment dated 20/09/2019 upheld the judgment in Land Acquisition Case No.39/1991 by dismissing the First Appeal No.638/2007. The applicants are permitted to withdraw the remaining amount of compensation. It is contended by the applicants that under the bonafide impression their Counsel would have appeared, they failed to appear. The local Counsel Mr. Nagre also expired in the year 2014. They had no mode to contact the Counsel appointed in Nagpur. In the year 2020, the Power of Attorney holder was able to procure the mobile number of their Counsel at Nagpur and inquired about the proceeding and it revealed to him that the Counsel at Nagpur had stopped practising before this Court. Therefore, the applicants obtained the documents and engaged another Counsel to withdraw the remaining amount. Subsequently, the nation was hit by the COVID – 2019 pandemic, which led to a lockdown, and therefore, the applicants could not approach this Court and preferred the appropriate proceedings. Under the bonafide impression that their Counsel would have filed a cross-objection, the applicants have not appeared before this

Court and, therefore, could not file the cross-objection and claim the enhanced amount of compensation. There was just and reasonable cause for condonation of delay however, this Court has held that the applicants approached to this Court for withdrawal of the amount and not enquired about the filing of the cross-objection is erroneous. It is further the contention of the applicants that this Court further observed that the applicants were represented by Advocate Thakare. In fact, Advocate Thakare obtained his Sanad in the year 2011, therefore, question of appearing in the appeal doesn't arise. The observation of this Court is on the basis of CIS information which is erroneous, and therefore, the order passed by this Court deserves to be reviewed. There is error apparent on the face of record which is to be corrected by allowing this application.

6. Said application is strongly opposed by the respondents on the ground that entertaining the application on the grounds mentioned therein would result into illegality as there is no error apparent on the record. The scope of the review is limited. The Court cannot reopen the issues and cannot take rehearing of the matter. This Court has passed the order on the basis of the record which was before the Court, and therefore, review application deserves to be rejected.

7. Heard Mr. Parth Sagdeo, learned Counsel for the applicants. He reiterated the contentions and submitted that the observation of this

Court that the applicants were represented by Mr. Thakare, learned Counsel. In fact, Mr. Thakare, learned Counsel has enrolled in the Bar Council of Maharashtra and Goa on 10/03/2011. The observation of the Court is on the basis of CIS information which is erroneous. Thus, there is error apparent on the record which deserves to be corrected by allowing review application.

8. *Per contra*, Mr. Dhattrak, learned Counsel for respondent No.3 submitted that the scope of review is very limited. The Court cannot permit the rehearing of the matter. Review petitioner by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error and, therefore, the application deserves to be rejected.

9. Having heard learned Counsel appearing for both the sides. The issue arises for the determination is whether the applicant could point out that there is apparent error in the order passed by this Court while considering the delay condonation application No.1311/2022 in First Appeal (Stamp) No.8742/2022.

10. Before advertng the issue raised it is necessary to see the legal position which is as follows :

In the case of *Haridas Das vs. Usha Rani Banik (Smt.) and*

others [2006(4) Mh.L.J. (S.C.) 14], while considering the scope and ambit of Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, it is observed and held in paragraph Nos.14 to 18 as under:

"14. In Meera Bhanja vs. Nirmala Kumari Choudhury, (1995)1 SCC 1780 it was held that:

"It is well settled law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, CPC. In connection with the limitation of the powers of the Court under Order XLVII, 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 speaking through Chinnappa Reddy, J. has made the following pertinent observations:

'It is true 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 be exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of 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 merit. That would be in 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 error committed by the Subordinate Court."

15. A perusal of the Order XLVII, Rule 1 show that review of a judgment or an order could be sought : (a) from the discovery of new and important matters or evidence which after the exercise

of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of record or any other sufficient reason.

16. *In Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (AIR 1979 SC 1047) this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order XLVII, Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p-390, para 3)

*"It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* (AIR 1963 SC1908) there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inherent 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 of 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."*

17. The judgment in Aribam's case (*supra*) has been followed in the case of Smt. Meera Bhanja (*supra*). In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. The following observations

in connection with an error apparent on the face of the record in the case of [Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tiruymale](#) [AIR 1960 SC 137] were also noted:

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."

18. *It is also pertinent to mention the observations of this Court in the case of [Parsion Devi v. Sumiri Devi](#) (1997)(8) SCC 715). Relying upon the judgments in the cases of Aribam's (supra) and Smt. Meera Bhanja (supra) it was observed as under :*

"Under Order XLVII, Rule 1, CPC a judgment may be open to review inter alia, if there is a mistake or an error apparent on the face of the record. 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 the record justifying the Court to exercise its power of review under Order XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, Rule 1, CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise."

11. Thus, an application for review would lie *inter alia* when the order suffers from an error apparent on the face of record and permitting the same to continue would lead to failure of justice. The power of review can also be exercised by the Court on the discovery of new and important matter of 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. An application for review would also lie if the order is passed on account of some mistake. It is well settled that reviewing Court is not an appellate court over its own order. Thus, the powers of review can be exercised for correction of mistake and such powers can be exercised within the limits of the statutes. The term 'mistake' or 'error' apparent is discussed by the Honourable Apex Court in the case of *State of West Bengal and others vs. Kamal Sengupta and another [(2008) 8 SCC 612]* and observed that the term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law.

12. The Honourable Apex Court in the case of *Ram Sahu (dead) through LRs vs. Vinod Kumar Rawat and others [2021(3) Mh.L.J. 268]*

by referring catena of decisions of the Honourable Apex Court observed that the principles which can be culled out from the above noted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under [Section 114](#) read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under [Section 22\(3\)\(f\)](#).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

It is further held in the case cited *supra* that to appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the

case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC.

13. Keeping in mind the aforesaid principles, let us consider the application of the applicant. As per the contention of the applicants, this Court has rejected the application for delay condonation on the ground that the applicant had approached this Court in 2020 seeking withdrawal and secondly the applicant had contested the First Appeal No.638/2007 filed by the acquiring body. Mr. Sagdeo, learned Counsel also pointed out that while assigning the reason this Court has observed that the applicants are the legal heirs of Sulochana w/o Gangadhar Patil which is not disputed. The factual aspect that the property was acquired by respondent No.3 by issuing Notification under Section 4 of the Act dated 14/11/1985 and under Section 6 of the Act dated 07/08/1986 is also not disputed. The applicants submitted the claim in respect of compensation before the Land Acquisition Officer by making statements dated 16/12/1985 and 09/03/1986. The reference filed by the applicants was allowed partly vide judgment dated 11/04/2007 by

Ad-hoc District Judge-1, Wardha. The appeal was preferred against the said judgment and award passed by the reference Court by the acquiring body - respondent No.3 bearing First Appeal No.638/2007. The notices of the said appeal are duly served on the applicants. The applicants have engaged the local Counsel Mr. Nagre who had handed over the papers to the local Counsel at Nagpur and they were under impression that the Counsel had filed the cross-objection. He submitted that while considering the application for delay condonation, this Court has observed that the material on record which sufficiently shows that the applicants were very well represented in the appeal filed by respondent No.3. The applicants further approached to this Court for withdrawing the amount but not filed any cross-objection. The copy of the cross-objection and the application of delay dated 11/02/2009 are placed on record. At the relevant time, in the appeal the applicants were very well represented by Advocate Thakare. Thus, the contention of the applicants that they were not aware about the Counsel is not acceptable, as they were appearing in the appeal and also filed an application for withdrawal of the amount. He submitted that Mr. Thakare, learned Counsel has not obtained the Sanad in the year 2009 and he was enrolled on 10/03/2011. Thus, it is an apparent error which needs to be reviewed and delay condonation application deserves to be allowed.

14. After considering the submission, I have perused the entire record. Admittedly, the aspect that learned Counsel Mr. Thakare was not enrolled in the Bar Council of Maharashtra and Goa on 10/03/2011, was not argued at the relevant time. Moreover, it was not the only reason for rejection of the application but it was considered that there was no sufficient and reasonable cause for condonation of delay. The Court has further considered that the terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact situation.

15. The principles laid down by the Hon’ble Apex Court are considered and held that sufficient cause is a condition precedent for exercise of discretion by the Court for condoning delay. The petitioner could not take benefit thereof approaching Court at belated stage. While considering whether there is a sufficient reason for condonation of delay or not, it is necessary to consider the principle laid down is that matter of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact. The question whether there was sufficient cause within the meaning of Section 5 of the Limitation Act, 1963 was considered and held that expression sufficient cause should receive a liberal construction so as to advance substantial justice when no

negligence or inaction or want of bonafide is imputable to a party. The expression sufficient cause within the meaning of Section 5 of the Limitation Act, 1963, Order 22 Rule 9 of the Code of Civil Procedure as well as similar other provisions and the ambit of exercise of powers thereunder have been subject matter of the consideration. The expression sufficient cause within the meaning of Section 5 of the Limitation Act though receive a liberal construction so as to advance substantial justice when no negligence or inaction for want of bonafide is imputable to a party. It is further observed that in another case whether expression furnished would constitute sufficient cause or not will be dependent upon facts of each case. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, it is observed that “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bonafide on its part in view of the facts and circumstances of a case.

16. By applying this principles, it is observed that the applicants were very well represented by the Counsel. They have engaged their Counsel, and Counsel was pursuing the appeal. The applicants filed civil application for withdrawal of the amount and filed affidavits before the Court along with the civil application. From these facts, it can be very well inferred that the applicants were very well aware about the pendency of the appeal, however they were not vigilant by making inquiry with the Advocate regarding progress of their matter when they can approach to the Advocate for withdrawal of the amount. Their contention that they were not aware whether cross-appeal/cross-objection was filed or not filed by the Counsel is unacceptable. When they approached to their Advocate for withdrawal of the amount, they should be vigilant by making an inquiry regarding the cross-objection. It is further observed that there is complete inaction and negligence on the part of the applicants and the reason mentioned for the condonation of delay appears to be reasonable one. The Court further observes on the basis of entry in the CIS that learned Counsel Mr. Thakare was representing the applicants. As per the contention of Mr. Sagdeo, learned Counsel that in the year 2009 Mr. Thakare was not registered with the Bar Council of Maharashtra and Goa and had not obtained his Sanad to start his practice. As observed earlier, this aspect was never argued before the Court during the delay condonation application.

17. Thus, on appreciation of the entire material on record, I find that this Court has assigned a reason while rejecting the application. On perusal of record of first appeal, it shows that notices were issued in the appeal to the present applicants on 28/08/2007. The noting of the Court dated 03/02/2009 shows that learned Counsel Mr. Bharat Vora appeared for respondent No.3, 3(b) and 3(c) (i.e. the present applicants). The notice subsequent to date 03/02/2009 shows that learned Counsel Mr. Vora was continuously attending the appeal. During the pendency of the appeal, he also filed Civil Application No.371/2009 in First Appeal No.638/2007 for withdrawal of the amount. Said application was supported with the affidavit. The applicants i.e. respondent Nos.3 and 4 were allowed to withdraw 1/4th of the amount deposited and they have complied the order by furnishing the surety. The subsequent notes dated 01/07/2009 and 16/07/2010 also shows that Mr. Vora, learned Counsel was representing the present applicants and also filed subsequent application i.e. Civil Application No.1540/2009 for withdrawal of the amount. The noting dated 05/08/2010 shows that respondent No.3 and 3(b) namely Sau. Sulochana w/o Gangadhar and Dongar Deorao Bhangale have executed General Power of Attorney in the name of Shri Gangadhar s/o Waman Patil to receive the compensation amount. Thus, the record of the first appeal shows that respondent No.3 and after the death of respondent

No.3 her legal heirs were represented by the Counsel. The Court further considered the entry in the CIS which shows that at the subsequent point of time, the applicants were represented by Mr. Sharad Thakare, learned Counsel. The appeal was disposed wherein also it is observed that there is no appearance on behalf of legal representatives of respondent No.3. The order dated 01/07/2009 also discloses that another Civil Application No.1540/2009 was filed for withdrawal of the amount to Mr. Bharat Vora, learned Counsel. Thus, the present applicants appear to be represented by the Counsel, therefore, the contention of Mr. Sagdeo, learned Counsel that there is apparent error on the face of record is not acceptable.

18. Taking into consideration the scope of review petition, facts of the present case and the law laid down by the Hon'ble Apex Court, submission made by Mr. Sagdeo, learned Counsel for the applicants that there was error apparent is not acceptable as the term 'mistake or error apparent' by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1

CPC. Thus, an order or decision or judgment cannot be corrected. Moreover, the contention of the applicants that Mr. Thakare, learned Counsel was not legal practitioner in the year 2007 as observed by the Court in the order is not acceptable because this Court has observed that learned Counsel Mr. Thakare has represented the parties. It nowhere shows that in the year 2007, the parties were represented by Mr. Thakare, learned Counsel. Besides the same, the application was rejected on other grounds also, therefore, the contention raised by submitting an affidavit is not acceptable. Moreover, said issue was not argued by the learned Counsel for the applicants at the time of deciding the Civil Application No.1311/2022.

19. In this view of the matter, the miscellaneous civil application for review has no merits and the same deserves to be rejected. Hence, the application is accordingly rejected.

(URMILA JOSHI-PHALKE, J.)

**Divya*