



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

1005 REVIEW APPLICATION (CIVIL) NO. 192 OF 2024
IN WP/14135/2023

Vishnudas Ramkishan AgrawalApplicant

VERSUS

The State of Maharashtra & othersRespondents

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Mrs. Anjali Dube, Advocate for Applicant.
Mr. B. A. Shinde, AGP for the State.

CORAM : R. M. JOSHI, J.

DATE : 21st NOVEMBER, 2024.

PER COURT :

1. This application is filed for review of judgment and order dated 11.06.2024 passed by this Court in Writ Petition No. 14135/2023 whereby the petition filed by the applicant herein came to be dismissed.

2. It was the case of the applicant in the said petition that he is tenant of the subject property and that considering the threat of demolition and dispossession at the hands of the Municipal Corporation as well as landlords, he filed suit being Regular Civil Suit

no. 615/2021. It was the case of the petitioner that inspite of there being restraining order against Respondent Nos. 4 and 5, i.e. landlords/original defendant Nos. 3 and 4, restraining them from dispossession plaintiff from the suit premises, on 14.11.2021 landlords removed debris and erected own structure thereby actually dispossessing plaintiff. It is the case of the applicant that since the said development at the hands of the landlords was in violation of the order of injunction passed by the Trial Court, an application was moved vide Exhibit 26 before the Trial Court for restoration of possession. Said application Exhibit 26 filed by invoking provisions of Section 151 of Code of Civil Procedure came to be rejected by order dated 21.07.2023, Writ Petition No. 14135/2023 was filed. This petition was dismissed after hearing both the sides.

3. Learned counsel for the applicant was heard for substantial time. It is sought to be contended that this Court has committed error in appreciating the facts on record. In this regard, attention of the Court is drawn to Paragraph No. 12 of the order, which according to learned counsel for the Applicant is an error of fact committed by this Court and the same has ultimately resulted in dismissal of the Petition and hence it is a fit case of review of

impugned judgment. It is argued on behalf of the applicant that for the purpose of seeking relief of restoration of possession, it was not necessary for the petitioner/plaintiff to amend the plaint and to incorporate such prayer therein. Thus, it is her contention that this Court committed error in rejecting the writ petition on the ground that there is no prayer made in the plaint to that effect.

4. The law on the point of review is fairly settled to say that review can be sought to any order/judgment firstly on discovery of new and important matter or evidence which, after exercise of due diligence was not within his knowledge or could not be produced at the time of the order. Secondly, on account of some mistake or error apparent on the face of record review is permissible. Thirdly, for any sufficient reason it is open for the Court to review its judgment.

5. While dismissing the petition, this Court has made following observations in paragraph No. 13 which are now sought to be assailed by the applicant which read thus :-

“13. Petitioner/Plaintiff though has amended the plaint and incorporated the subsequent events caused after filing of the suit and passing of ad-

interim relief in his favour, however, conspicuously relief of possession of the suit premises or restoration of possession has not been sought in the plaint. This Court finds substance in the arguments advanced by the Counsel for the landlords that in absence of any relief being prayed in the plaint, it may not be open for the plaintiff to seek the said relief by way of an interim application be under Section 151 or under Order XXXIX of CPC.”

6. If it is the case of the applicant that amendment to the plaint is not required to the effect of seeking restoration of the possession for the purpose of seeking interim relief by invoking Section 151 or Order XXXIX Rules 1 and 2, this submission amounts to claim that there is error of law, if at all and certainly not error of fact. In any case, the said observations are made in view of settled law that party cannot seek relief at interim stage which is not final relief asked for. Thus, this Court finds no error apparent on face of record committed to make above quoted observations.

7. Unless the essential requirements for maintaining a review are met with or fulfilled no cognizance of such application could be taken by any Court. Hence, this is not a fit case even for

issuance of notice to the Respondents. As a result of this, review application stands dismissed.

(R. M. JOSHI)
Judge

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