

PVR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.37 OF 2023

IN

WRIT PETITION NO.8647 OF 2022

Chintamani Pandey

... Petitioner

Versus

Divisional Joint Registrar of Co-op. Societies,
Mumbai Div. And Ors.

...Respondents

Mr. Rajiv Narula with Yazad Udawadia, Ms. Bijal Gandhi, Mr. Sanjay Maji
and Ms. Purva Basrur i/b. D.M.Legal Associates, for Petitioner.

Mr. Vaishali Nimbalkar, AGP for the State.

CORAM: G. S. KULKARNI, J.

DATED: 2nd FEBRUARY, 2024

P.C.

1. This review petition is filed by the petitioner praying for the review of the order dated 3 February 2023 passed by this Court.
2. This review petition was earlier heard on 2 May 2023 when the Court has passed the following order:-

1. At the outset, it is required to be noted that the judgment of which review is sought for, is a detailed judgment and now the petitioner has changed the Advocate and through the new Advocate the petitioner has moved the present review petition.
2. Perusal of the grounds of review petition, in my opinion, are in fact grounds in an appeal.

3. Mr.Narula, learned Counsel for the petitioner, nonetheless would submit that the petitioner intends to incorporate some additional grounds.
4. Leave to amend. Let amendment be carried out within one week from today.
5. List the petition on **16 June 2023 at 2.15 p.m.** in Chamber.”

3. On the above backdrop, the petition is listed today. The grievances of the petitioner in praying for review of the judgment and order dated 3 February 2023 are three fold. Firstly, the objection is the observations of the Court as made in paragraph 16 of the order, which reads thus

“16. At the outset, it is required to be noted that the present petition is a classic case of an abuse of the process of law. The following discussion would aid the conclusion. It is a settled principle of law that a litigant who invokes the jurisdiction of this Court under Article 226 and 227 of the Constitution, is required to approach the Court with clean hands and without suppressing any materials whatsoever, much less by suppressing documents, which are material for adjudication of the proceedings. It is required to be noted that the petitioner has left no stone unturned in suppressing material facts and most importantly the inspection report, as also the relevant replies to the inspection report, which are placed on record by the official respondent/State Government and the society. It is on this ground alone the petition would be required to be dismissed. There also appears to be an oblique intention of the petitioner to keep such materials away from the Court. “

4. The second contention of Mr. Narula, learned Counsel for the petitioner in regard to observations as made in paragraph 18 of the order wherein the Court observed thus:

“18. The only contention as urged on behalf of the petitioner is that there were minutes of the AGM, which would show that the AGM was held, however, as rightly pointed out on behalf of the society / respondent No.3 from paragraph 8 of the affidavit that the petitioner had not submitted any attendance sheet alongwith the alleged minutes

of the meeting. The contents of paragraph 8 are already noted above. It thus appears that there are some attempts on the part of the petitioner to create record of the AGM, apart from canvassing a patently false case before this Court. Further, such document appears to be a totally bogus document in the absence of semblance of particulars in regard to the attendance sheet of the members in any such meeting being produced before the concerned authority, at the relevant time.”

5. The third grievance of the petitioner in regard to the observations in paragraph 20 of the impugned order wherein the Court has observed that there are some financial irregularities. The observations in paragraph 20 read thus:-

“20. The record also indicates that there are some financial irregularities, and in that regard, a notice was issued to the petitioner. The nature of the irregularities was to the extent that the petitioner had issued a cheque of Rs.5,30,000/- from the society’s account in favour of his son. Further certain amounts, the details of which were kept blank were sanctioned in the managing committees meeting presided over by the petitioner. Thus, certainly there was a motive for the petitioner to continue to be in charge of the record of the society and hold on to the post of Secretary and for which he intends to contest the elections of the society and pursue the present proceedings.”

6. It is a settled position in law that the scope of review proceeding is not in the nature of an appeal. Only an error apparent on the face of the order, can be corrected.

7. In so far as the observations in paragraph 16 are concerned, it is clear that the above observations indicate reference to the position in law that to invoke the jurisdiction under Article 226 and 227 of the Constitution, the litigant is required to approach the Court without suppressing any material

whatsoever, much less by suppressing documents which are necessary for adjudication of the proceedings. In the facts of the case, the Court also observed that in this case the petitioner had suppressed material facts, including the inspection report, as observed in paragraph 16 of the order. Mr. Narula's contention that such observations be removed from the order, in my opinion, is totally untenable. It may be observed that what is necessary is a holistic appreciation of the order and considering the facts of the case, it would also require an overall view of the proceedings and the reasons which weighed the Court in passing the judgment. This is not a case where the Court in making the observations in paragraph 16 was not justified in doing so.

8. In so far as the observations in paragraph 18 are concerned, Mr. Narula has contended that the minutes of the AGM were available. However, this is not what is relevant. It may be observed that what was relevant was that the petitioner had not submitted the attendance sheet recording the names of persons and bearing their signatures who attended the AGM alongwith the alleged minutes of the meeting. Mere minutes of the AGM without the list of persons attending the same could not be of any legal consequence. It is for such reason, the Court had made observations in regard to the conduct of the petitioner, which was a significant issue also as considered by the authorities including in the inspection.

9. Insofar as Mr. Narula's contention in regard to observations in paragraph 20 are concerned, such observations are on the basis of the record namely from the affidavit filed on behalf of the State Government / Deputy Registrar of the Co-operative Societies wherein a clear statement in regard to the issuance of show cause notice was made, and in that regard the observations are made by the Court in the said paragraph. It also appears from the reply dated 1 February 2022 submitted by the Secretary of the Society, that there is no specific denial to what was alleged in the show cause notice and what has been stated in regard to the amounts is to the effect that such amount was paid to one J.P. Consultant. Thus, it cannot be said that there is an error apparent on the face of the record in making the observations in paragraph 20. Moreover, the inspection report as submitted by the Inspection Officer on the inspection of the society made under Section 89A of the Maharashtra Co-operative Societies Act, 1960, in paragraph 40 has observed thus:

(Official Translation of a marked portion from Minutes, typewritten in Marathi.)

“(40) In the meeting of the Society held on the date 13.10.2029 (2019), the Managing committee granted approval to the expenditure to this extent without even writing the amount in Rs./-, in the minutes of the meeting, a space has been left blank without mentioning as to whom the amount in Rs./- is to be paid. (Copy of the minutes of the meeting dated 13.10.2029 (2019) is enclosed as per Appendix No. 17.). In the minutes of the said meeting, a space has been left blank by mentioning 12% but without mentioning the amount in Rs...../- to Shri. Rupesh Pande (son of Mr. Chintamani Pande, the Secretary of the Society) and also a space has been left blank by mentioning 15% but without mentioning the amount in Rs...../ to Shri. Adv. Pankaje Pande who is a member of the Society. Resolution

has been passed to pay the legal fees only. In Appendix No. 8 in the minutes of the meeting dated 14.03.2021, in the letter referred to hereinabove, (it has been mentioned) it is necessary to make thorough inquiry in respect of the said matters as per the provisions of the Act. The provisions of the bye-laws have been violated here.”

10. Thus, what is part of the record is being thoroughly overlooked by the Review petitioner in having a quarrel on the observations made in paragraph 20 of the order under review.

11. It is a settled principle of law that the review proceedings are not in the nature of any appeal proceedings. Review proceedings can be entertained only when there is an error apparent on the face of the record and not an error which would be required to be invented on a re-analysis of the materials and / or a different view to be taken by the Court on the same material. Also it cannot be a pick and choose, for the review petitioner to persuade the Court to have a fresh perspective of the proceedings.

12. Thus, considering the material which was available before the Court and on the basis of which the findings are recorded in the order under review, no case for review of the judgment and order is made out. The review petition is wholly misconceived. It is accordingly rejected.

(G. S. KULKARNI, J.)