



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 60 OF 2021
IN
WRIT PETITION NO. 7931 OF 2019

Nirajkumar Dubey.	]	
Aged Adult, Occ : Retired,	]	
Indian Inhabitant having address at	]	
A-1/4, S. No. 47/4B, Seoul "C" CHS,	]	
Gandhi Bhavan Road, Kothrud,	]	
Pune 411 029.	]	
	]	...Review Petitioner.

VERSUS

1. Additional Commissioner, Konkan	]	
Division, Mumbai, Old Secretariat,	]	
1 st Floor, Fort, Mumbai 400032.	]	
	]	
2. Competent Authority (Rent Act),	]	
Konkan Division, Mumbai, MHADA	]	
Buiding, Kalanagar,	]	
Bandra (East), Mumbai 400051.	]	
	]	
3. EEPICINDIA	]	
(Formerly Engg. Export Promotion	]	
Council) having its registered office at	]	
Vanijya Bhavan, 1/1, Wood Street,	]	
Kolkatta- 700016 and its Regional	]	
office at B-202, Aurus Chambers	]	
Annex "B", 2 nd Floor,	]	
Behind Mahindra Towers,	]	
S.S. Amrutwar Marg, Worli,	]	
Mumbai – 400013.	]	
	]	...Respondents.

*Dr Veerendra Tulzapurkar a/w Mr. A. P. Wachasundar Mr. Mandar Soman for
for the review petitioner.*

*Mr. A. P. Vanarase, AGP for respondent nos. 1 and 2.
Mr. P. J. Thorat, Mr. Malcolm Siganporia and Mr. Samarth Chowdhary i/b
Indus Law for respondent No.3.*

Coram : Sharmila U. Deshmukh, J.

Reserved on : December 13, 2023.

Pronounced on : January 30, 2024.

JUDGMENT.:

1. Review is sought of the judgment and order dated 19th May 2020 passed by this Court in Writ Petition No. 7931 of 2019.
2. For the sake of convenience, the Review Petitioner is referred to as "Landlord" and Respondent no 3 as "Tenant". The facts as revealed from the judgment under review is that Writ Petition No. 7931 of 2019 was filed by Tenant challenging the order passed by the Competent Authority, Konkan Division and Additional Commissioner, Konkan Division, evicting the Tenant under the provisions of Maharashtra Rent Control Act, 1999 [for short "the Act of 1999"]. By virtue of leave and license agreement dated 16th May 1971, the suit premises i.e. Flat No.5 situated in Shivsagar building at Blck No. 19, Worli Sea Face, Worli, Mumbai was given on leave and licence basis by the original owner – Sita Kayship to the Tenant.
3. The licence was subsisting on 1st February 1973 however, at the

request of owner, the rent was to be enhanced from Rs.525/- to Rs.600/- fresh agreement purportedly extending the licence was executed between the parties on 30th July 1973 inter alia providing for such enhanced rent / compensation. The suit premises changed hands and fresh agreement was executed for providing increased rent. The suit premises was thereafter sold to one Savitri Dubey who is the predecessor in title of the Landlord. By agreement dated 21st April 2001, licence was purported to be created in favour of the Tenant by late Savitri Dubey providing once again for enhanced rent. In the year 2005, Tenant filed suit under Section 33 of Small Causes Court at Mumbai being R.A.D. Suit No. 600 of 2005 for declaration of deemed tenancy which at the time of hearing of petition was pending. During the pendency of the declaratory suit, late Savitri filed Application No.13 of 2005 before the Competent Authority for eviction of the Tenant as licensee from the suit premises in which the Tenant applied for leave to defend. Upon the leave to defend being denied by the Competent Authority and Revision Application being rejected, Writ Petition No. 7380 of 2005 was filed in this Court by the Tenant. By an order dated 30th January 2013, the orders rejecting leave to defend was set aside and the Tenant was granted leave to defend. Letters Patent Appeal filed by the Landlord was rejected by the Division Bench of this Court as also the review petition.

Subsequently, the Tenant filed its written statement and also an additional written statement. By order dated 15th June 2018, the Competent Authority allowed the Eviction Application which order was confirmed in Revision by the Additional Commissioner, Konkan Division.

4. This Court in Writ Petition No. 7931 of 2019 considered the submissions raised by counsel for the Landlord and Tenant and allowed the Petition vide judgment dated 19th May, 2020 and held thus in paragraph 16 :

“the sum and substance of the above discussion is that in view of the deemed tenancy of the petitioner herein, the suit premises are exempted from the application of the Act and as a result, the Competent Authority lacked jurisdiction to entertain any application under section 24 of the Act in respect of the premises. The impugned orders of the competent authority and the Additional Commissioner, thus, deserve to be quashed and set aside.”

5. The present review petition seeks review of the judgment of 19th May 2020.

6. Heard Dr. Tulzapurkar, learned Senior Advocate appearing for the review petitioner and Mr. P. J. Thorat, learned Counsel appearing for respondent no.3. Both have tendered synopsis and written submissions.

7. Dr. Tulzapurkar, learned Senior Advocate for the Review Petitioner submits that the judgment suffers from apparent error of law. He submits that for the purpose of exercise powers of review, the errors on the face of record are not required to be confined to error of fact but extend to errors of law which are apparent on the face of record. He has taken this Court through the findings in the judgment under review and would submit that the findings demonstrate error apparent on the face of record.

8. He submits that the finding of learned Single Judge that the Competent Authority has no jurisdiction by holding that there is no question of Section 24 of the Rent Act taking precedence over Section 3(1)(b) of the Rent Act as there is no conflict suffer from an apparent error of law as the learned Single Judge has failed to consider the proper effect of non obstante clause in section 24 of the Act of 1999. He would further submit that for the purpose of considering the proper effect, the object of provisions of section 24 of the Act of 1999 is required to be considered and the judgment of the co-ordinate bench in ***Chimanlal Shah v. Farhana Abdul [2009(6) Mh.L.J. 598]*** which considered the object of Section 24 of the Rent Act was not noticed. He submits that material provisions, i.e., Section 39 to 42 of the Rent Act were not noticed. He submits that in

particular Section 42 of Rent Act which begins with non obstante clause gives jurisdiction to the competent authority to entertain application by the landlord for recovery of possession of the premises.

9. He submits that learned Single Judge has held that Section 15A of the old Rent Act provides for legal consequences which follows irrespective of volition of the parties and as such as incapable of being waived by contract between the parties. Assailing the same, he contends that learned Single Judge has failed to notice the non obstante clause in section 13A2 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 [for short "the Act of 1947"] while considering the issue of deemed tenancy. He submits that by virtue of non obstante clause contained in Section 13A2 which is a subsequent amendment, the provisions of Section 13A2 will have overriding effect on Section 15A of the Act of 1947.

10. He would further submit that learned Single Judge failed to notice the decisions in ***KSL Industries v. Arihant Threads [(2008) 9 SCC 763]***, ***Bank of India v. Ketan Parikh [(2008) 8 SCC 148]*** and ***Shri. Sarwan Singh v. Kasturi Lal [(1977) 1 SCC 750]***. He submits that as held in the case of ***Selection Committee for Admission to the Medical and Dental College, Bangalore v. M.P. Nagaraja [AIR 1972***

Mys. 44] ignoring binding decision of Supreme Court constitutes an error apparent on the face of record.

11. He submits that the finding of learned Single Judge that the law of rent control made in public interest does not admit of parties contracting out of the provisions, suffers from an error for the reason that rent control act is a beneficial legislation but not in public interest and that the statutory right can be waived by an individual. He submits that decisions of the Apex Court in ***Basheshar Nath v. Commissioner of Income Tax [AIR 1959 SC 149]*** and ***Nirbai Kumar v. Maya Devi [(2005) 5 SCC 399]*** were not noticed. He submits that decision in the case of ***Marlin & Harris v. VIth Addl Dist Judge [(1998) 1 SCC 732]*** was noticed but was wrongly distinguished. He submits that learned Single Judge applied the decision of Apex Court in the case of ***Natraj Studio v. Navrang Studio [(1981) 1 SCC 533]*** without noticing that the said decision was rendered prior to the amendment of 1987 and in that case the issue was one of jurisdiction and not of individual statutory right of licensee. He would further submit that plain reading of the decision in the case of ***Natraj Studio v. Navrang Studio (supra)*** would indicate that the Apex Court had not held that it is a legislation in public interest. He submits that learned Single Judge ignored the binding decision of a co-ordinate bench in the case

of ***Alban Joseph Gonsalves v. Rallis India Ltd. [(2004) Bom LR 645]*** which was squarely applicable to the facts of the case by wrongly applying the decision in the case of ***Natraj Studio (supra)***. He submits that the statutory provisions, binding decision of the Apex Court as well as the earlier decision of the Court of co-ordinate jurisdiction were not noticed. In support of his submissions, Dr. Tulzapurkar relies upon the following decisions :

- (1) ***Commissioner of Sales Tax J & K v. Pine Chemicals Ltd [(1995) 1 SCC 58];***
- (2) ***M. Murarirao & Ors. v. Balvanth Dixit [AIR 1924 mad 98];***
- (3) ***Debi Sahai Gulzari Mal v. Basheshar Lal [AIR 1928 Lahore 919];***
- (4) ***Kamla Chaudhari v. Lal Chandra [AIR 1945 All 284];***
- (5) ***Narayan v. Raman [AIR 1953 Tr & C 306];***
- (6) ***Sir Hari Shankar Pal v. Anathnath [AIR 1949 F.C. 106];***
- (7) ***K. Shankarnarayana Pillai v. S.P. Sankara Iyer [AIR 1954 T & C 226];***
- (8) ***M/S Abhijit Tea Co. v M/S Terai Tea Co. P. Ltd [AIR 1995 Cal 316];***
- (9) ***Batuk K. Vyas v. Surat Borough Municipality [AIR 1953 Bom 133];***
- (10) ***Smt. Shakuntalabi Krishna Phoyar v. State of Maharashtra [AIR 1986 Bom 310];***
- (11) ***State of Rajasthan v. M/s Mehta Chetandas Krishnadass [AIR 1981 Raj. 36];***
- (12) ***M/s Delta Foundation v. Kochi & Ors. [AIR 2003 Kerala 201];***

- (13) ***Selection Committee for Admission to the Medical and Dental College, Bangalore v. M.P. Nagaraja* [AIR 1972 Mys. 44];**
- (14) ***Rajendra Singh v. Lt. Governor Andaman & Nicobar Islands* [(2005) 13 SCC 289];**
- (15) ***Tungabhardra Industries Ltd v. Govt. A.P* [AIR 1964 S.C. 1372];**
- (16) ***Usha Rani Batik v. Haridas Das* [AIR 2005 Gauhatti 1];**
- (17) ***Hari Vishnu Kamath v. Ahmad Ishaque* [AIR 1955 SC 233];**
- (18) ***KSL Industries v. Arihant Threads* [(2008)9 SCC 763];**
- (19) ***Bank of India v. Ketan Parikh* [(2008) 8 SCC 148];**
- (20) ***Shri. Sarwan Singh v. Kasturi Lal* [(1977) 1 SCC 750];**
- (21) ***Basheshar Nath v. Commissioner of Income Tax* [AIR 1959 SC 149];**
- (22) ***Marlin & Harris v. Vith Addi Dist Judge* [(1998) 1 SCC 732]**
- (23) ***Nirbai Kumar v. Maya Devi* [(2005) 5 SCC 399];**
- (24) ***Natraj Studio v. Navrang Studio* [(1981) 1 SCC 533];**
- (25) ***Alban Joseph Gonsalves v. Rallis India Ltd.* [(2004) Bom LR 645];**
and
- (26) ***Ramesh Ramrao Hate v. Parvez B. Bhesania* [(1997) 2 Bom CR 407];**

12. *Per contra* Mr. Thorat, learned counsel for the Tenant would submit that no cause for review is made out satisfying the provisions of Order 47 Rule 1 of CPC. He submits that the judgment under review has discussed the relevant statutory provisions and

considered the same in correct perspective. He submits that as regards the proper effect of non obstante clause not being considered, learned Single Judge has categorically dealt with the said issue and has arrived at a finding that section 24 of the Act of 1999 does not take precedence over section 3(1)(b) of the Act of 1999. He submits that after considering the relevant provisions, learned Single Judge has given categorical findings, which cannot be corrected in exercise of review jurisdiction and the remedy lies elsewhere.

13. As regards the submission that learned Single Judge has failed to notice the 1987 amendment by which section 13A2 of the Act of 1947 was introduced, he submits that the said provision does not in any manner take away the rights which have been crystalised and in any event the review petitioner had not initiated any proceedings under section 13A2 of the Act of 1947 against the respondent and the proceedings were initiated under section 24 of the Act of 1999. As regards the waiver of statutory right conferred by section 15A of the Act of 1947, he submits that it is not the case of landlord before the competent authority that there is waiver of statutory right. He submits that in any event, the statutory benefit granted by way of section 15A of the Act of 1947 is not capable of being waived. Relying upon decision in the case of ***M/s Shalimar Tar Products Ltd.***

v. H.C. Sharma and others [(1988) 1 SCC 70], he submits that the Apex Court has held that as the statute is in public interest, there cannot be any question of waiver of any right dealing with the right of tenants and landlords. He submits that in the case of ***Duli Chand v. Jagmender Dass [(1990) 1 SCC 169]*** the Apex Court has held while noting that everyone has a right to waive and to agree to waive the advantage of law made solely for the benefit of protection of the individual in his individual capacity in the context of statutory provisions of Delhi Rent Control Act, that the requirement as to the consent being in writing was in public interest and therefore there cannot be any question of waiver of right dealing with the tenants or landlords. He submits that learned Single Judge in the judgment under review has used the word “public interest” to convey that the Rent Control Act is a welfare legislation and it would be against public policy to permit the parties to contract out of the provisions. As regards the contention that learned Single Judge has considered the statutory right as a fundamental right and has thereby erred as statutory rights are capable of being waived, that argument was not advanced by the review petitioner at the initial stage of argument and in any event learned Single Judge has held that the rights conferred under section 15A of the Act of 1947 could not be waived and the effect of section 15A of the Act of 1947 does not depend

upon the volition of parties.

14. He submits that the the grounds on which the review is sought does not conform to the criteria laid down in the provisions of Code of Civil Procedure, 1908 as well as the decision in the case of ***Kamalesh v. Mayawati [(2013) 8 SCC 320]***. He submits that learned Single Judge has categorically dealt with the submissions and arguments advanced by both the parties extensively on three different dates. He submits that at the stage of earlier Writ Petition No. 7380 of 2005 and Writ Petition No.7931 of 2019, the landlord had contended that no protection is available to the tenant in respect of the suit premises and this Court had observed in its order dated 6th February 2009 and 13th January 2013 that if the argument is accepted it will necessarily follow that the application filed by the applicant under section 24 of the Act of 1999 will be without jurisdiction. In support of his submissions he relied on the following decisions :

- (1) ***M/s Shalimar Tar Products Ltd. v. H.C. Sharma and others [(1988) 1 SCC 70];***
- (2) ***Duli Chand v. Jagmender Dass [(1990) 1 SCC 169];***
- (3) ***S. Murali Sundaram v. Jothibai Kannan and Others [2023 SCC OnLine Sc 185];***
- (4) ***H.A. Mohan Kumar and others v. P. Muralidhar and others [(2005) 5***

ALD 552];

- (5) ***Kamlesh Verma v. Mayawati and others [(2013) 8 SCC 320];***
- (6) ***Pulugoru Gopal Reddy and 37 others v. Mandal Revenue Officer, Tirupathi (Urban) Mandal and others [2014 SCC OnLine AP 92];***
- (7) ***Engineering Export Promotion Council v. Savitri Dubey [Civil Application No. 114 of 2009 in Writ Petition No. 7380 of 2005];***
- (8) ***Engineering Export Promotion Council v. Savitri Dubey [Writ Application No. 7380 of 2005];***

15. Considered the submissions and minutely perused the judgment under Review and the decision cited at the bar.

16. Section 114 of the CPC which is the substantive provision dealing with the scope of review reads thus :

“114. Review.—Subject as aforesaid, any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

17. The grounds which are available for filing review application

against a judgment have been set out in Order 47 Rule 1 which reads thus :

"1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case shall not be a ground for the review of such judgment."

18. Before advertng to the facts of present case, it will be profitable to refer to decision of Apex Court in case of **S. Madhusudan Reddy v. V. Narayana Reddy [2022 SCCOnline SC**

1034]. The Apex Court considered several judicial pronouncements governing the field of review and held in paragraph nos. 19, 20, 21, 23, 24 and 27 as under :

"19. In Col. [Avatar Singh Sekhon v. Union of India and Others](#) this Court observed that a review of an earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. The observations made are as under:

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In [Sow Chandra Kante and Another v. Sheikh Habib](#) this Court observed :

'A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.' " (emphasis added)

20. In [Parsion Devi and Others v. Sumitri Devi and Others](#), stating that an error that is not self- evident and the one that has to be detected by the process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise the powers of review, this Court held as under:

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of [Order 47 Rule 1 CPC](#). In [Thungabhadra Industries Ltd. v. Govt. of A.P.](#) this Court opined:

'11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'. The fact that on the earlier occasion the Court held on an identical state of facts

that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.'

8. Again, in [Meera Bhanja v. Nirmala Kumari Choudhury](#) while quoting with approval a passage from [Aribam Tuleshwar Sharma v. Aribam Pishak Sharma](#) this Court [once again held that](#) review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of [Order 47 Rule 1 CPC](#).

Under [Order 47 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 47 Rule 1 CPC](#). In exercise of this jurisdiction under Order 47 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'".

21. The error referred to under the Rule, must be apparent on the face of the record and not one which has to be searched out. While discussing the scope and ambit of [Article 137](#) that empowers the Supreme Court to review its judgments and in the course of discussing the contours of review jurisdiction under [Order XLVII Rule 1 of the CPC](#) in [Lily Thomas](#)(supra), this Court held as under :

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56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere

possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. -----

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58. ----- Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. ----- In [Hari Vishnu Kamath v. Ahmad](#), it was held:

“It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. -----”

----- The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.”

23. Under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power which enables the Superior Court to correct errors committed by a subordinate Court. This point has been elucidated in [Jain Studios Ltd. V. Shin Satellite Public Co. Ltd.](#) where it was held thus:

“11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law 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. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

After discussing a series of decisions on review jurisdiction in **Kamlesh Verma v. Mayawati and Others**, this Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, [CPC](#). As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below :

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in [Chajju Ram vs. Neki](#), and approved by this Court in [Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulose Athanasius & Ors.](#) to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in [Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.](#)

20.2. When the review will not be maintainable: -

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

- (v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review. (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."
27. In the captioned judgment, the term 'mistake or error apparent' has been discussed in the following words:
- "22. 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. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision".

19. Conspectus of the various decisions noted by the Apex Court in case of ***S.Madhusudan Reddy Vs V. Narayana Reddy(supra)*** indicates the following:

- a) Review of earlier order cannot be done unless the court is satisfied that the material error which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness.
- b) A review of judgment is a serious step and reluctant resort to its is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.
- c) An error that is not self evident and the one that has to be detected by process of reasoning, cannot be described as an error apparent on face of the record for the Court to exercise the powers of review.
- d) In exercise of powers of review, 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'.
- e) The error referred to in Order 47 Rule 1 of CPC must be apparent on face of the record and not one which has to be searched out. It must be an error of inadvertence.

- f) The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two view on the subject is not a ground for review.
- g) Error apparent on face of the proceedings is an error which is based on clear ignorance or disregard to the provisions of law.
- h) Error apparent on face of record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature and it must be left to be determined judicially on the facts of each case.
- i) Under the garb of filing review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

20. The contours of review jurisdiction are well settled by the Apex Court through its several consistent judicial pronouncements and what is required is the application of those parameters to the facts of each individual case.

21. Now coming to the grounds on which review is sought.

According to Mr. Tulzapurkar, the judgment under review suffers from error of law apparent on face of the record. The facts of the case are already discussed above. Before the learned Single Judge the submissions of learned Counsel for the Tenant and Landlord are recorded in paragraph nos. 3 and 4 of the judgment as under :

"3. Mr. V .A. Thorat, learned Senior Counsel appearing for the Petitioner, makes the following submissions :

(i) It is submitted, firstly, that the Petitioner being a government company, or a public sector undertaking, the suit premises being let to it are exempt from the provisions of the Act. It is submitted that despite holding (in answer to Issue No.7) that the premises were so exempted, the Competent Authority went on to entertain the application for eviction of the Petitioner from the suit premises under Section 24 of the Act, committing thereby a jurisdictional error.

(ii) Learned Counsel, secondly, submits that the Petitioner being a licensee of the suit premises, not being less than a room, under a subsisting licence as on 1 February 1973 became a deemed tenant of the premises as of that date and could not be evicted from it except under the provisions of Chapter IV of the Act which provides for recovery of possession of tenanted premises by a landlord against a tenant. It is submitted that once the status of a deemed tenant is acquired by law, it continues unless the same is put an end to by a procedure known to law. It is also submitted that such status is a legal consequence and the parties cannot contract out of it. It is submitted that subsequent agreements

of licence cannot have the effect of doing away with the deemed tenancy of the Petitioner or in any manner contracting out of it.

4. Mr.Vachasundar, learned Counsel for Respondent No.3, on the other hand, makes the following submissions :

(i) Learned Counsel submits that the provisions of Section 24 of the Act would operate notwithstanding anything contained in the Act, suggesting thereby that those provisions would operate notwithstanding the exemption provision contained in Section 3(1)(b) of the Act.

(ii) Learned Counsel secondly submits that after repeal of the earlier Rent Act (namely, Bombay Rents, Hotel & Lodging House Rates Control Act, 1947, hereinafter 'Bombay Rent Act'), only those matters which are saved by Section 58, which is the Repeal and Savings clause in the present Act, would stand saved, whereas the deemed tenancy of the Petitioner under Section 15A of the Bombay Rent Act is not such matter and is not therefore saved.

(iii) Learned Counsel lastly submits that whatever may be the position in law, the conduct of the parties, as envisaged by the documents executed by them since 30 July 1973, clearly indicates that the parties did not recognise the purported deemed tenancy of the Petitioner."

22. Perusal of the judgment under review indicates the following findings of the Learned Single Judge:

(a) By reason of Section 3 (1)(b) of Rent Act, the Rent Act is inapplicable to the subject premises as the Tenant is a Company. As such even the provisions of Section 24 of Rent Act are inapplicable to the subject premises. Non obstante clause of Section 24 operates in case of conflict. As there is no conflict between Section 24 and other provisions of the Act, there is no question of Section 24 taking precedence over Section 3 (1) (b). Learned Single Judge relied upon decision of this Court in case of Hindustan Ferrodo Ltd Vs Hari Lachman Hasija reported in 2003 (4) Mh.L.J 50 where this Court held that the character or status acquired by the Company therein as a deemed tenant under the Old Act continued and unless the same was put to an end by procedure known to law, they could not be evicted.

(b) The effect of Section 15A beginning with non obstante clause does not depend on volition of parties. It is legal consequence provided by a statutory enactment. Law of rent control made in public interest does not admit of parties contracting out of its provisions and it is impermissible to contend that contracts between the parties executed after 1st February, 1973 nullify the effect

of Section 15A of Rent Act.

(c) The judgment of Apex Court in case of **Martin & Harris Ltd vs VI Additional District Judge** (supra) and decision of co-ordinate bench in **Alban Joseph Gonsalves** (supra) were distinguished.

(d) The waiver was claimed in respect of substantial provision of law enacted for benefit of licensees as a class and in public interest and it cannot be termed as private benefit of a procedural provision, which could be waived.

(e) In view of the deemed tenancy of the Tenant the suit premises are exempted from the application of the Act and Competent Authority lacked jurisdiction under Section 24 of the Rent Act.

23. The Review Petitioners have assailed each and every finding of the learned Single and contends that each of these findings suffer from an error of law apparent on face of record. I shall now deal with the contentions of the Review Petitioners as regards the apparent error of law ad seriatim:

(I) Proper effect of Non obstante clause of Section 24 of Rent

Act not considered; object of Section 24 of Rent Act not considered ; decision in ***Chimanlal Shah vs Mrs. Farhana Abdul Jabar Sayyad reported in (2009) 6 Mh.L.J. 598*** not noticed: Section 39 to 42 of Rent Act, particularly Section 42 which contains non obstante clause not noticed.

The Learned Single has considered the effect of Section 3 (1)(b) of the Rent Act in context of applicability of Section 24 of Rent Act to the subject premises and held that in view of the exemption therein, the Rent Act was not applicable to the subject premises. Interpreting the non obstante clause, the Learned Single Judge has taken a view that the non obstante clause occurring in Section 24 of the Rent Act applies only in event of conflict and as there was no conflict between Section 3 (1)(b) and Section 24, the non obstante clause does not take effect and thus there is no question of Section 24 taking precedence over Section 3 (1)(b).

24. The sum and substance of submission of Dr. Tulzapurkar is that the process of reasoning adopted by the learned Single Judge is flawed as the object of Section 24 and material provisions being Section 39 to 42 of Rent Act were not considered while interpreting the non obstante clause. The learned Single Judge on interpretation

of Section 3(1)(b) of the Rent Act has held that the provisions of the Act (including Section 24) are uniformly inapplicable to such premises. To accept the submission of Dr. Tuljapurkar would require rehearing the arguments pertaining to the interpretation of non obstante clause of Section 24 of Rent Act *vis-a-vis* section 3(1)(b) of the Act of 1999 against the background of the object of the provisions which is impermissible in review jurisdiction. The submission is that provisions of Section 39 to 42 were also not noticed. Once the learned Single Judge has held that the Act itself is not applicable by virtue of the exemption under section 3(1)(b) of the Act of 1999, the provisions of sections 39 to 42 which are part of the Act of 1999 even if noticed would not have material bearing.

25. The effect of non obstante clause contained in Section 24 of the Rent Act was considered and interpreted by the Learned Single Judge and a view has been taken by the Learned Single Judge. In review jurisdiction, it is not permissible for this Court to substitute the view taken. Whether the view taken does not admit of proper effect of Section 24 is a matter which is to be corrected by the superior forum, if considered as erroneous.

26. Pertinently, in the earlier round of litigation between the same parties, the orders dated 6th February, 2009 and 30th January, 2013 would indicate that the view taken was that as protection of Maharashtra Rent Control Act is not available, the application for eviction under Section 24 would also not be maintainable.

(II) While holding that Section 15A of Bombay Rent Act operates irrespective of volition of parties as it contains non obstante clause, the non obstante clause in Section 13 A2 was not noticed and being subsequent amendment will prevail.

27. The learned Single has held that the result of Section 15A of the Act of 1947, which begins with non obstante clause is a legal consequence provided by statutory enactment and which follows irrespective of volition of the parties, which it has nothing to do with. Upon my reading of the observation of the learned Single Judge, the learned Single Judge considered that the legal effect of Section 15A does not require any further act or consent of the parties for the Tenant to become deemed tenant by virtue of statutory enactment. The contention of Review Petitioner is that non obstante clause of Section 13A2 which is later amendment is not noticed. Section 13A2

governs the recovery of possession from licensee whereas Section 15A bestows the status of deemed tenant on the licensee in occupation on 1st February, 1973. It cannot be said that the provisions of Section 13 A2 are so clear and unambiguous that without consideration of interplay between Section 13A2 and Section 15A the effect of Section 13A2 is to to wipe out the legal consequence of operation of Section 15A, in which case the non consideration of Section 13A2 could have been held to be an error of law apparent on the face of record. It is not an error of law which can be corrected in review jurisdiction but a error of law manifest on face of record which does not require elaborate arguments to establish it. There is no quarrel with the proposition that Section 13A2 of the Act of 1947 being later amendment will prevail. However, for the purpose of reviewing the finding of learned Single Judge, this Court will have to interpret Section 13A2 of the Act of 1947 as to whether by virtue of subsequent amendment, the intention of Legislature was to override the benefit conferred by Section 15A of the Act of 1947 or create a summary procedure for recovery of possession of licences premises where there was no issue of deemed tenancy. Learned Single Judge had considered Section 24 of the Act of 1999 which is *pari materia* with Section 13A2 of the Act of 1947 and has held that the contractual provisions must yield to

statutory provisions. The exercise which the review petitioner seeks this Court to go into is impermissible in review jurisdiction.

- (III) That as the Rent Control Act is beneficial legislation and not in public interest and statutory right can be waived by an individual, the finding that law of rent control is made in public interest does not admit of parties contracting out of its provisions and therefore it is impermissible to contend that the contract between the parties executed after 1st February, 1973 nullifies the effect of Section 15A of Act of 1947 constitutes manifest error of law.

27. The learned Single Judge although has used the terminology “public interest” the reliance on decision of Apex Court in **Natraj Studios (P) Ltd vs Navrang Studios (supra)** indicates that the learned single Judge has used the word “public interest” to convey that the rent act being welfare legislation, public policy does not permit contracting out of statutory provisions.

28. As regards the contention that statutory rights can be waived, reliance is placed on decision in case of **Baseshar Nath v. Commissioner of Income Tax [AIR 1959 SC 149]** and **Martin & Harris**

Ltd v. Vth Additional District Judge [(1998)1 SCC 732]. The Constitution Bench of Apex Court in case of **Baseshar Nath vs Commissioner of Income Tax (supra)** was considering the question as to whether the assessee could waive the breach of fundamental right in question and whether in facts of that case he had actually done so. It was held that fundamental rights could not be waived. Justice S.K. Das concurring observed that with regard to ordinary statutory right therein, it is well recognised that a statutory right which is for the benefit of an individual can in proper circumstances be waived by the party for whose benefit the provision has been made.

29. The learned Single Judge has relied upon the decision in **Natraj Studios (P) Ltd vs Navrang Studios(supra)** which held as under:

".... Public policy requires that contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted. Therefore, public policy requires that parties cannot also be permitted to contract out of the legislative mandate which requires certain kinds of disputes to be settled by Special Courts constituted by the Act...."

30. The learned Single Judge also distinguished the decision in case of **Martin & Harris Ltd (supra)**. Taking support of the proposition of law laid down in **Natraj Studios (P) Ltd (supra)**, the learned Single

Judge has held that the parties cannot contract out of the provisions of rent control legislation which is in public interest. In case of ***Shalimar Tar Products vs H. C. Sharma*** (*supra*), which was quoted with approval in ***Dhulichand Vs Jagmender Dass*** (*supra*), on which reliance is placed by Mr. Thorat, the Apex Court has held in context of Delhi Rent Control Act, 1958 that in this requirement of statute which is in public interest, there cannot be any question of waiver of a right, dealing with rights of tenants or landlord. It can thus be seen the Courts have used the terminology “public interest” while construing the provisions of rent control legislations.

31. That being the judicial pronouncements, in my view, the learned Single Judge cannot be said to have committed a manifest error of law while following the decision of the Apex Court in the case of ***Natraj Studios (P) Ltd vs Navrang Studios***(*supra*) while holding that the law of rent control made in public interest does not admit of parties contracting out of its provisions. Although the said decision of Apex Court was on the issue of exclusive jurisdiction of Small Causes Court, the observations made therein was binding on the learned Single Judge. The decision of **Natraj Studios (P) Ltd** being prior to the amendment of 1987 which introduced Section 13A2 does not make any difference. The learned Single Judge has

noted the ratio laid down in paragraph 17 of the decision of Apex Court that public policy requires that rights conferred on tenants by the Act cannot be permitted to be nullified by contracts to the contrary. The decision in the case of ***Alban Joseph Gonsalves v. Rallis India Ltd. [(2004) Bom LR 645]*** was distinguished for the reason that the public policy aspect of the law of rent act was not considered and applied and the case of ***Natraj Studio (supra)*** was not cited before the learned Single Judge and that the effect of section 15A of the Act of 1947 was not considered by the Judge in ***Alban Joseph Gonsavles (supra)***. Though not stated in so many words, the learned Single Judge in the judgment under review has observed that the decision in ***Alban Gonsavles (supra)*** was *per incuriam* having failed to notice the statutory provisions of section 15A of the Act of 1947 as well as the decision in ***Natraj Studios (supra)*** and has therefore not considered the same. The submission of Dr. Tulzapurkar that the reliance was wrongly placed on the decision in the case of ***Natraj Studio (supra)*** and the decision of ***Alban Gonsavles (supra)*** could not be ignored being binding precedent, would render the judgment under review erroneous which cannot be corrected in review jurisdiction.

32. The question is do the submissions of the Review Petitioner

point out an error of law in the judgment under review which is self evident and is capable of being corrected without a detailed process of reasoning. In earlier round of litigation, the submissions were advanced and negated by a detailed reasoned judgment. All pleas raised before the learned Single Judge were considered and addressed. The arguments of Review Petitioners would require this Court to consider the relevant provisions of the Rent Act and the Old Rent Control Act and thereafter to interpret the provisions to arrive at a finding whether by virtue of leave and license agreements entered into by the Tenant acquiring deemed tenancy, there has been conscious waiver of the statutory right by the Tenant and whether the provisions of Section 24 of Rent Act are applicable notwithstanding the exemption under Section 3(1)(b) of Rent Act. This exercise has already been done in the earlier round of litigation. It would have been permissible to review the decision, if the decision is shown to suffer not only from an error of law but from a manifest error of law. To constitute a manifest error of law, the error should be one which stares in the face and does not require an extensive searching expedition. In the instant case it cannot be said that without a comprehensive reasoned finding substituting the view taken by the learned Single Judge, the earlier decision can be reviewed. That being so, the power lies with the superior forum.

33. The material assiduously collected and presented for consideration before this Court was not placed during the original hearing of the Petition and based on these material, the Review Petitioners seek to reopen the earlier decision. Upon a reading of the judgment under review it cannot be said that the view taken by the learned Single Judge was not a possible view.

34. There is no quarrel with the proposition of law which is enunciated in various decisions tendered across the bar that an error which is apparent on the face of record can constitute a ground for review. However, the question is the application of the said principles to the facts of every individual case and to consider whether the same amounts to an error apparent on the face of record. The decisions indicate that it is settled that a decision which is erroneous in law is not a ground for ordering review if the Court has decided a point and had decided it erroneously, the error could not be one apparent on the face of record or even analogous to it. When however, the Court disposes of the case without adverting to or applying its mind to the provisions of law which gives it jurisdiction to act in a particular way that may amount to error apparent on the

face of record sufficient to bring the case within the purview of Order 47 Rule 1 of CPC. See **Sir Hari Shankar Pal and Anr. Vs. Anath Nath Mitter and Ors. [AIR 36 (1949) FCR 36]**. In the present case it cannot be said that the learned Single Judge has not applied its mind to the relevant provisions of the law and the judicial pronouncements and hence no case for review is made out.

35. Now coming to the decisions cited, in case of ***Commissioner of Sales Tax J & K v. Pine Chemicals Ltd [(1995) 1 SCC 58]*** the matter arose in the context of Section 8(2-A) under the Jammu and Kashmir Sales Tax Act and Central Sales Tax Act. The Apex Court in the facts of that case observed that the relevant decisions were brought to the notice of the bench and it referred to the ratio of the decision, however neither followed it nor made an attempt to distinguish it and the decisions did not support the interpretation adopted in the judgment under review. The Apex Court in that case held that the reasoning was at variance with the clear and simple language employed in section 8(2-A) of Act and does not bear or admit of a construction upon it in the judgment under review and as such held that the same suffers from manifest error of law. The Apex Court in that case observed that the language of Section 8(2-A) of the Act was

clear and unambiguous and do not admit of any other interpretation than the one placed by the bench. This decision was pressed in support of submission that errors of law can be reviewed. There is no quarrel with the said proposition of law.

36. As regards the decision in the case of ***Debi Sahai Gulzari Mal v. Basheshar Lal [AIR 1928 Lahore 919]***, the application made for review was on the ground of failure of the Court to apply law of limitation. Failure to apply particular provision of law would constitute an error apparent on the face of record. However, in the present case, what is sought to be done is to challenge the interpretation placed by learned Single Judge on various provisions of rent act and the interplay amongst various provisions of the law which cannot constitute an error apparent on the face of record as it will amount to substituting the interpretation placed by learned Single Judge.

37. In ***Abhijit Tea Company Pvt. Ltd vs Terai Tea Co. (P) Ltd [AIR 1995 Cal 136]*** the Calcutta High Court has held that when the Court did not apply the provisions of enactment which on the face of it apply to a case, same would be a mistake or error on the face of record but mere error of law is not a ground for review only a

manifest error would be a ground for review. The Court further held that what is an error on the face of record cannot be defined precisely or exhaustively there being an element of indefiniteness inherent in its very nature and it must be left to the determination of judiciary on the facts of each case.

38. In the present case, it is not as if the relevant provisions of law had not been considered at the time of passing of judgment. The relevant provisions, i.e., sections 24 and 3(1)(b) of the Act of 1999 and section 15A of the Act of 1947 which were relevant for the purpose of deciding the issue were considered and interpreted. Learned Single Judge while distinguishing decision of the co-ordinate bench which was placed for consideration of the Court, has duly considered the same and has declined to apply the same for the reason that the same does not take into consideration the relevant statutory provisions as well as the decision in ***Natraj Studio (supra)***.

39. In the case of ***M/s Delta Foundation v. Kochi [AIR 2003 Kerala 201]*** the Kerala High Court noted the decision in ***Parsion Devi v. Sumitri Devi (1997 (8) SCC 715)*** and held that there is clear distinction between the erroneous decision and error apparent on the face of record; the first can be corrected by the higher forum while later can only corrected by exercise of review jurisdiction. In

that case, the Court while interpreting Article 55 of the Limitation Act had interpreted the starting point for recovery of determined compensation in clear violation of the said Article which provides for time from which the period begins to run and as such the Court held that there is an error apparent on the face of record as the statute of limitation assumes the existence of cause of action and does not define or create one.

40. In the instant case, the submission which was advanced before the learned Single Judge was whether in view of the provisions of section 3(1)(b) of the Act of 1999, section 24 of the Act of 1999 would operate. It is in that context, learned Single Judge interpreted the provisions and upheld the applicability of section 3(1)(b) of the Act of 1999.

41. In the case of ***Selection Committee for Admission to the Medical and Dental College, Bangalore v. M.P. Nagaraja [AIR 1972 Mys. 44]*** the High Court of Karnataka has held that when there is a decision of the Apex Court bearing on a point and the view is taken by the Court which is not consistent with the law laid down by the Apex Court such an error would clearly be an error apparent on the face of record. In the present case, the learned Single Judge has relied upon the binding decision of Apex Court in *Natraj Studios (P)*

Ltd and Navrang Studios and distinguished the decision in Martin & Harris Ltd vs VI Additional District Judge.

42. In the case of *Tungabhardra Industries Ltd v. Govt. A.P [AIR 1964 SC 1372]* the Apex Court was concerned with the statement made in its order that the case did not involve any substantial question of law and whether the same would constitute an error apparent on the face of record. The Court held that even if the statement was wrong, it would not follow that it is an error apparent on the face of record, for that for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by error apparent. The Apex Court held 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. The Apex Court held that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record.

43. In the present case, what we have is a view taken by the learned Single Judge on section 24 and section 3(1)(b) of the Act of 1999 and the legal effect of section 15A of the Act of 1947. For the

purpose of interpreting the same, learned Single Judge has given reasoned findings and it cannot be said that there is clear case of an error apparent on the face of record.

44. In the case of *KSL Industries v. Arihant Threads [(2008)9 SCC 763]* the Apex Court has held that in case of two or more enactments containing similar non-obstante clause operating in the same or similar direction, the Court must attempt to find out the intention of the Legislature by examining the nature of controversy, object of the Act, proceedings initiated, relief sought and several other relevant considerations. The contention of Dr. Tulzapurkar is that while considering the provisions of section 24 of the Act of 1999, learned Single Judge has failed to consider the object and effect of the non-obstante clause. The submission even if accepted would render the process of reasoning flawed which can be corrected only by the superior forum.

45. As regards the waiver of statutory right, it is not disputed that it is not open for a citizen to waive the fundamental rights provided by Part-III of the Constitution of India. In the case of *Basheshar Nath v. Commissioner of Income Tax [AIR 1959 SC 149]* the Apex Court has held that the rights conferred on the citizen may be classified into statutory rights, constitutional rights and fundamental rights

and that constitutional rights may or may not be waived by the citizen. However, the fundamental rights cannot be waived by citizen. The contention of Dr. Tulzapurkar is that learned Single Judge has construed the statutory right as a fundamental right and decision of the Apex Court held that even the constitutional right can be waived but it is only fundamental right which cannot be waived. The issue whether the rights had been waived has not been shown to be a case of the review petitioner in the application under section 24 of the Act of 1999. Learned Single Judge was considering the legal consequence of section 15A of the Act of 1947 and has held that the said Act being in public interest does not admit of parties contracting out of its provisions.

46. In view of the discussion above, in my opinion, there is no error of law apparent on the face of record to justify review of the judgment dated 19th May, 2020 passed in Writ Petition No 7931 of 2019. Review Petition fails and is dismissed.

[Sharmila U. Deshmukh, J.]