



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.6 OF 2024
IN
SECOND APPEAL NO.416 OF 2024

Harishchandra Vishram Kumbhar

...Petitioner

Versus

The Government of Maharashtra,
Thr. District Collector Ratnagiri And Ors.

...Respondents

Adv. Harsh Nishar, Amey Deshpande for the Petitioner.

Adv. Sumit Kothari for Respondent No. 3.

Adv. A. R. Patil, AGP for the State.

Coram : Sharmila U. Deshmukh, J.

Date : August 9, 2024.

P. C. :

1. Heard.

2. By this Review Petition, review is sought of the judgment dated 9th February, 2024 dismissing the Second Appeal. The Second Appeal was preferred by the Appellant challenging the judgment of dismissal dated 17th August, 2017 passed in Regular Civil Appeal No.28 of 2016 thereby confirming the judgment of the Trial Court dated 10th November, 2016 passed in Regular Civil Suit No. 48 of 2011.

3. The challenge in Regular Civil Suit No. 48 of 2011 was to the action initiated by the Tahsildar for demolition of the suit property and for injunction in which counter claim was filed by the Respondent Nos. 3 to 5 seeking removal of construction. The Trial Court dismissed

the suit and decreed the counter claim.

4. Learned Counsel appearing for the Review Petitioner would submit that the record of the permission granted by the Grampanchayat is in the custody of the Gram Panchayat. He would submit that the permission was granted for construction as per the permission granted by the Gram Panchayat and though the resolution was produced on record and was exhibited, the same has not been considered while passing the judgment and it was held that resolution was not produced which is error apparent on face of record. He would submit that a case of review is made out under Order 47 Rule 1 of CPC, as there is discovery of new and important matter which after exercise of due diligence was not within the knowledge when the impugned judgment was passed.

5. I have considered the submissions and perused the judgment under review alongwith the judgment of the Trial Court and the Appellate Court.

6. Firstly, it needs to be noted that Order 47 Rule 1 of CPC provides for review where from discovery of new matter or evidence which after exercise of due diligence was not within the knowledge of the person aggrieved or could not be produced by him at the time when the decree was passed or on account of error apparent or for any other sufficient cause. The submissions of learned counsel for Review Petitioner are two fold firstly, that resolution though produced was not considered leading to error apparent on face of record and secondly, that there is discovery of new and important evidence. As to what is the new and important matter has not been

canvassed which has been discovered subsequently is not brought to the notice of the Court. Perusal of the ground (i) of Review Petitioner would indicate that review is sought on the first submission of resolution and not considered by holding that the resolution is not produced.

7. Regular Civil Suit No. 48 of 2011 was filed by the Review Petitioner challenging the notice issued by the Respondent Nos. 1 and 2-Statutory Authorities in respect of structure measuring 21ft. in length and 20ft. in width, situated at Gat No. 57 at village Narvan, District Ratnagiri of which the Respondent Nos. 3 to 5 were the owners. The Review Petitioner's case was that the permission was given for the construction by the owners as well as by the Grampanchayat. During the hearing, the Appellate Court considered the evidence of PW-2 admitting that no permission was obtained before raising the construction on the suit property and that there is no document to show that the Grampanchayat had given permission to the wooden kiosk.

8. In paragraph 9 of the judgment under review, this Court considered the findings of the Appellate Court on the evidence of PW-2 that the Plaintiff had not obtained any permission before raising the construction of the suit property. This Court held that admittedly in the Trial Court proceedings, there is no written permission placed on record and the documentary evidence produced by the Plaintiff are the applications for permission and not written permission.

9. In paragraph 10 of the judgment, this Court noted the findings of the Appellate Court that the original proceeding book of the

Grampanchayat was perused by the Appellate Court and it was held that there are interpolations in the original proceeding book. As no perversity of findings was demonstrated, the Second Appeal was dismissed.

10. Now the contention of the Review Petitioner is that the resolution passed by the Grampanchayat though exhibited but was not duly considered. I have gone through the grounds of the Second Appeal set out as substantial questions of law. The contention raised by the Review Petitioner that the resolution was not considered or that the record was in custody of the Grampanchayat does not find mention in the grounds. Apart from the same, the judgment under review clearly holds that no perversity of findings of the Appellate Court was demonstrated.

11. In view of the submission raised by the Review Petitioner, though not required to do so in exercise of review jurisdiction, I have perused the judgment of the Appellate Court. In paragraph 45, the Appellate Court has discussed the resolution which is exhibited as Exhibit-98. The Appellate Court considered the admissions of PW-2, the then Village Sarpanch in context of the resolution passed and also perused the oral proceeding book which was on record and came to a finding that the resolution is inserted later on and there is fabrication of record. The Appellate Court held that no copy of the alleged construction permission was produced on record by the Plaintiff and the suit property is not constructed by obtaining permission of Grampanchayat. The review on the ground of error apparent is for the reason that the resolution though exhibited but was not considered and held to have not been produced is therefore liable to be rejected.

12. In view of the above, no case for review is made out. The present Petition is clearly an attempt to re-argue the matter which already stands concluded by the judgment dated 9th February, 2024 by change of Advocate. It is well settled that review is not an appeal in disguise and therefore, I do not find any merit in the Review Petition.

13. Petition stands dismissed.

[Sharmila U. Deshmukh, J.]