

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 2 OF 2024

IN

INTERIM APPLICATION NO. 7330 OF 2024

IN

WRIT PETITION NO. 13693 OF 2022

Abu Saleh Ansari

..... Review Petitioner

VERSUS

**Eliyas @ Samir Ahmed Hingora
& Ors.**

..... Respondents

Mr. R.K.Sharma a/w. Mr.Prince Kumar Upadhyay, Mr.Soheb Shaikh, Mr.Malcom i/b. Sharma Syndicate Lex & Co. for the Review Petitioner.

Ms.Priyanka Kothari for the Respondent Nos. 1 and 2.

CORAM: RAJESH S. PATIL, J.

DATE : 1 JULY, 2024

P.C. :-

This Review Petition is filed by the original respondent no.4, in Writ Petition, seeking review of judgment and order dated 10 May, 2024, passed by me in Interim Application No. 7330 of 2024.

2. Mr.Sharma, learned counsel for the review petitioner

submitted that in Appellate Side, the writ petitions are nothing else, but a type of appeal. He further submitted that in a review petition, an advocate who has not argued the main proceedings arising out of impugned order can make submissions in review petition. He, submitted that as per the latest judgment of Supreme Court in case of ***B.C.C.I. vs. Netaji*** reported in ***AIR 2005 SC 592***, the scope of review is now enlarged.

3. Mr.Sharma submitted that his client has not filed any Special Leave Petition in Supreme Court challenging the impugned order passed in the writ petition.

4. Mr.Sharma further submitted that the writ petition arises out of the suit filed by Mr.Shakir Abdul Latif Papi. He submitted that the suit itself was not maintainable, hence the order passed in the writ petition is null and void.

5. Mr.Sharma submitted that his clients initially were not the party in the suit. However, at a later stage, they were

implemented as a party defendant. He submitted that section 85 of the Waqf Board Act bars the civil suit.

6. He further submitted that in paragraph (11) of the impugned order, there is an error apparent on the face of the record as it is mentioned that the owner of the suit property is the Municipal Council of Mahabaleshwar. He submitted that it should have been the Municipal Council of Panchgani.

7. Mr.Sharma further submitted that there can't be any name 'Eliyas'. He submitted that the said name who appears to have filed the writ petition and is a party in the Lower Court is a fictitious person as there can't be any person by name 'Eliyas'.

8. Mr.Sharma further submitted that in paragraph (14) of the impugned judgment, the Court has allowed petitioner to withdraw Rs.25,70,000/- when the petitioner has sought withdrawal of only Rs.23,00,000/-.

9. Mr.Sharma submitted that the judgment of Supreme Court in case of *Anil Kumar Singh vs. Vijay Pal Singh & Ors.* reported in *(2018) 12 SCC 584*, the Supreme Court has held that in Head Note (C), that there can't be any bar to the plaintiff to withdraw the suit. He submitted that the plaintiff is *Dominus Litis*.

10. He submitted that this Court should have first verified who is in possession of the suit premises by appointing the Court Receiver, and only then the '*status quo*' order should have been passed. He submitted that a wrong statement was made by the learned counsel appearing for his client at the time of hearing of the interim application in the writ petition qua, the possession of the suit premises. He submitted that it is settled law that the client should not be suffer because of the wrong statement made by the learned counsel appearing for his client.

11. Mr.Sharma submitted that the writ petition should not have been treated as if it is a civil suit by this Court.

12. Mr.Sharma submitted that the possession of the suit premises was voluntarily given to his client by Mr.Shakir Abdul Latif Pipi. Hence, the suit had become infructuous, therefore a Pursis was filed for withdrawal of the suit. Hence, the suit could not have been continued. He submitted that the judgments referred were considered but no reasons was given in the impugned judgment as to why they were not applicable to the present proceedings.

13. Mr.Sharma referred to judgment of *Laxminarayan Motilal Gupta vs. Bhagwandas Bhagonelal Shah & Anr.* reported in *2005 (3) Mh.L.J. 646.*

14. Mr. Sharma also submitted that there is a misconception of law as inspite of withdrawal of the suit, this Court has again directed that the suit be disposed of within a period of one year.

15. Ms.Kothari, learned counsel appearing for the respondent nos. 1 and 2 submitted that the grounds as mentioned in the

review are more like the grounds of appeal.

16. She submitted that no ground is made out to entertain this review petition. There was only one mistake in the impugned order as regards the Municipal Council, Mahabaleshwar instead of Municipal Council, Panchgani. She submitted that the said correction can be carried out by way of speaking to minutes.

17. I have heard learned counsel for both the sides and have considered the documents on record.

18. The present review petition is filed by a different advocate on record, who was not before me when I passed the impugned judgment in the interim application. There is no satisfactory reasons given by the review petitioner of the issue whether a different Advocate can file and argue a Review Petition. In fact, an argument is made that a new advocate can always appear in a review petition. In fact, allegations are made against the counsel who argued the original proceedings before me; on the issue of

who is in possession of suit premises.

19. As regards the order of allowing the petitioner to withdraw Rs. 25,70,000/- is concerned, the said amount was increased from Rs.23,00,000/- since the petitioner in writ petition had volunteered to further deposit amount in this Court. Hence, according to me, there is no substance in the argument of Mr.Sharma.

20. Mr.Sharma referred to the judgment of In the judgment of ***Laxminarayan*** (supra) of this Court. In the said judgment, a Single Judge of this Court, held that where there is no discussion of sub-tenancy by the Appellate Authority and the Appellate Authority did not record any finding in relation to parting of possession and also as regards consideration of such parting, and the reviewing authority refuse to consider the issue, this has resulted into the failure of the justice. According to me, the facts in this judgment were quite different than the present proceeding. Therefore, the ratio doesn't apply to the present

proceedings. However, the same judgment also held that every error in the garb of review cannot and should not be corrected nor the reviewing authority should hear the review application as an appeal against its own order.

21. I am of the view that the grounds raised in the present review petition are as if I am hearing appeal against my own order.

22. After considering the arguments of the learned counsel appearing for the review petitioner, I am of the considerable view that in this present proceedings under the guise of review, the review petitioner has attempted to re-agitate and reargue questions which have already been addressed and decided by me. Mr.Sharma was not able to show any error apparent on the face of record, for me to review my order dated 10 May, 2024.

23. Supreme Court in the judgments of *Perry Kansagra vs. Smriti Madan Kansagra*, reported in (2019) 20 SCC 753, and in

Shanti Conductors (P) Ltd. vs. Assam SEB, reported in ***(2020) 2 SCC 677***, has held that power of review can be exercised for correction of a mistake but not to substitute a view.

24. No case is made out. Hence, review petition stands dismissed. No costs.

[RAJESH S. PATIL, J.]