



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CAO NO.661/2021 & MCA (Review) St.No.2227/2021 IN

Family Court Appeal No.68/2018

Durgaiya Pocham Sullewar and another **Vs** Aruna w/o Durgaiyaa
Sullewar Pocham and another

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of direction
and the Registrar's orders.*

Court's or Judge's order

Ms. N.A.Biala, Advocate for applicants.
Ms. Padma Chandekar, Advocate for respondent no.1.

CORAM : NITIN W. SAMBRE & ABHAY J. MANTRI, JJ.
DATE : APRIL 22, 2024.

Heard.

2. In view of consent extended by the counsel for the non-applicant, we condone the delay of seven days caused in preferring a review application. The application for condonation of delay as such stands allowed.

3. The applicant is seeking the review of the judgment delivered in Family Court Appeal No.68 of 2018 decided on 15th December 2020. The cause, which prompted the applicant to prefer the aforesaid appeal, was that the respondent no.1 initiated proceedings bearing Petition No.B-30 of 2012 before the Family Court, Nagpur on 21st July 2012 and sought relief of declaration that she is legally wedded wife of the respondent.

4. The Family Court, after considering the rival claims has allowed the said proceedings with the following declaration:

"(i) A declaration that Aruna is entitled to be a sole nominee of Durgaiya being his legally wedded wife.

(ii) A declaration that the act of the Commanding Officer in canceling the claim of Aruna and entering the name of Laxmibai as a nominee in the service record of Durgaiya is illegal.

(iii) By mandatory injunction, original respondent no.3 was directed to re-enter the name of Arun as the nominee of Durgaiya in his service record, by deleting the name of Laxmibai.

(iv) Durgaiya was directed to pay Rs.5,000/- towards expenses of litigation".

5. After the aforesaid declaration was granted, the applicant preferred an appeal bearing Family Court Appeal No.68 of 2018, which was dismissed by this Court on 15th December 2020.

6. Amongst other, grounds which are canvassed by the counsel for the applicant in support of the prayer for review are: a new document was discovered which is in the form of a communication addressed by the deceased husband of the

respondent to the employer, whereby having regard to the fact that the non-applicant was missing from 9th February, 1989, her name was requested to be struck off from the employment record/service, and the name of the applicant was inserted. According to her, the aforesaid document in voluminous terms speaks of the fact that the non-applicant/original claimant before the Family Court has gone missing from the company of the deceased husband. According to her, there is a substantial difference between the words, '*missing*' and '*desertion*' as can be noticed from the provisions of the Hindu Marriage Act, 1955. Once the non-applicant went missing, there was no question of initiation of proceedings for divorce on the grounds of desertion. In addition, her contentions are that this Court is required to be sensitive to the circumstances in which the deceased husband performed the second marriage with the applicant no.2. According to the counsel, the circumstances, that led to the performance of a second marriage are very much narrated in the communication referred above, which was addressed by the deceased-husband to his employer. Further contention is that the Family Court should have exercised restraint in regard to the exercise of jurisdiction, as provided under Section 7 of the Family Courts Act, 1984.

7. The counsel would urge that the reliefs, which are claimed before the Family Court can only be claimed under the Specific Relief Act, 1963 and that too before the competent Civil Court and not before the Family Court. She would further claim that on perusal of the judgment of the Family Court and also the Appellate Court it would reveal that the rights of the applicant are not crystallized to the extent of their entitlement from the service benefit of the deceased husband. On the aforesaid grounds, the review of the judgment delivered by this Court on 15th December 2020 is sought.

8. While countering the aforesaid, the counsel for the respondent would urge that what is sought to be done by the applicant in review proceedings is to introduce altogether a new case, which was never contested or argued either before the Family Court or before the First Appellate Court. The counsel for the respondent would urge that this Court is required to be sensitive to the scope of the review jurisdiction and submit that the application is devoid of merit and is liable to be rejected as all the issues can be raised by the appellant/applicant in an appeal, which is an appropriate statutory remedy available to the applicant. As such, the prayer for dismissal is made.

9. We have considered the rival claims.

10. Section 7 of the Family Courts Act, 1984 reads thus:

"7. Jurisdiction – (1) Subject to the other provisions of this Act, a Family Court shall -

(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation – The suits and proceedings referred to in this subsection are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children, and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
(b) such other jurisdiction as may be conferred on it by any other enactment”.

11. Perusal of the provision particularly Section 7(1)(a) provides that the Family Court has all the jurisdiction exercisable by the District Court or any subordinate Civil Court under any law time being in force in respect of suits and proceedings of the nature referred to in the Explanation to the said section.

12. Explanation (b) to Section 7 of the Family Court Act, 1984 is worth referring. It provides for powers being vested in the family court for deciding suit or proceeding seeking direction as to the validity of marriage or matrimonial status of a person.

13. As far as the suit in question is concerned, prayer in the same was for declaration in relation to the validity of marriage. As such having regard to the above discussion, it cannot be said to be not permissible to canvass the same before the Family Court.

14. The issue which is dealt with by the Family Court, is well within the ambit of Section 7 (1)(b) of the Family Courts Act, 1984, and as such it cannot be said that the Family Court

proceeded contrary to the provisions of Section 7 of the Family Courts Act, 1984. The Family Court has exclusive jurisdiction to make a declaration as to the validity of marriage or matrimonial status of a person. In **Balram Yadav V/s. Fulmaniya Yadav** reported in (2016) 13 SCC 308, the Hon'ble Apex Court in paragraph 7 of the said judgment held as under:-

"Under Section 7(1) Explanation (b), a suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under Section 8, all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the civil courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status. Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws."

15. The discovery of the new documents will be of hardly any assistance in view of the findings recorded by the Family Court. The issue as to the withdrawal of nomination was well within the consideration of the Family Court while delivering the

judgment and the same was appreciated having regard to the testimony of the deceased husband who in categorical terms admitted to have performed a second marriage when his first marriage with the non-applicant was already subsisting.

16. Before advertng to the contentions raised by the learned counsel for the parties, let us regurgitate the well-settled law on the scope of review as contemplated in Order 47 of the CPC, as well as in the Constitution Bench judgment of the Supreme Court in ***Beghar Foundation Vs. K.S.Puttaswamy and others*** (Aadhaar Review-5 J.) reported in (2021) 3 SCC 1, laid down the dictum on the point of review, which was summarised by the Hon'ble Apex Court in ***Sanjay Kumar Agrawal V/s State Tax officer and others with other connected matters***, in paragraph 16 of the judgment, is as under:-

"16. The gist of the aforestated decisions is that:

16.1. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2. A judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

16.3 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.

16.4. In the exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected".

16.5. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise"

16.6. Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

16.7. An error on the face of the record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

16.8. Even the change in law or subsequent decision/judgment of a coordinator or larger Bench by itself cannot be regarded as a ground for review".

17. In the aforesaid background, we are of the view that the issue, which is sought to be raised by the applicant so as to invoke the review jurisdiction cannot be said to be germane to the cause of exercising review jurisdiction.

18. We hardly see any error apparent on the face of the record to exercise review jurisdiction.

19. The application lacks merit, same stands rejected.

20. Pending application, if any, stands disposed of

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Mukund Ambulkar