



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

CIVIL APPLICATION [CAO] NO.1528 OF 2024
IN
MISC. CIVIL APPLICATION [REVIEW] NO.56 OF 2023
IN
SECOND APPEAL NO.135 OF 2014

[Baburao s/o Sitaram Metkar and others .vs. Sarjabai Baburao Ghawas (Dead) through L.Rs and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. K.S. Narwade, Advocate for Applicants.
Mr. G.M. Kubade, Adv. h/f Ms. Anjana M. Raut, Advocate for Respondents.

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CORAM : SANJAY A. DESHMUKH, J.
DATE : 11th DECEMBER, 2024.

1. This is an application for grant of hearing and modification of the judgment delivered by this court dated 03.08.2024 in Misc. Civil Application (Review) No.56/2023.
2. The respondents prayed for review of the judgment passed by this Court in Second Appeal No.135/2014 dated 29.09.2022 under Section 114 read with Order XLVII of the Code of Civil Procedure, 1908 (for short the "CPC").
3. After hearing the review application, it was allowed and the impugned judgment was set aside. The hearing of Second Appeal No.135/2014 on one more question of law was accordingly scheduled on 19.08.2024. Meanwhile the applicants filed an application for speaking to the minutes bearing Civil Application No.1031/2024. In that application, it was contended that argument nos.1 to 2 were not considered by this

court while deciding review application. This court partly allowed the application for speaking to the minutes and argument no.2 was directed to be added in the judgment of review after the para no.10 as new para no.10-A. This court also clarified that if an application about added argument no.2 is moved, then it can be decided accordingly. The applicants have moved this application and prayed for passing necessary order for hearing the applicant and to modify the judgment dated 03.08.2024, if required, in the interest of justice in view of argument no.2.

4. Learned advocate for the applicants pointed out the precedential law of **Artson Engineering Limited .vs. Indian Oil Corporation Limited**, reported in 2015 SCC OnLine Bom. 39, in which it is held by the Gujarat High Court further that after dictating the judgment/order, if any mistake on factual aspects has crept in while transcribing the same, those also can be corrected on an application for “speaking to the minutes of the order”. So also, if any argument of either side is missed in the original order, then also, on such application, the concerned court can modify the original order to give complete effect to it. However, an application for “speaking to the minutes of the order” cannot be considered at par with a review application or even in a given case with an application for clarification/modification of the order. In view of the above, learned Advocate Narwade for applicants submitted that in view of argument no.2, it would be proper to hear the review application and accordingly it be decided a fresh by modifying the said judgment. He submitted to allow the application.

5. Learned Advocate Mr. G.M. Kubade a/w Advocate Ms. Anjana M. Raut strongly opposed the application and submitted

that the argument of learned advocate for the applicant is considered in para no.9 in which it was held by this court that it is settled law that 'Law' need not be pleaded. Therefore, not raising ground of objection under Rule 10A of Order XXII of the CPC in the application of the review is not justifiable. The said argument though not transcribed in exact words as it is, the sum and substance of the argument is transcribed and considered by this court, which appears from the reasons of the said judgment. It is not necessary to re-produce the entire argument in the judgment. Further law need not be pleaded and if it is argued and if law is pointed out during argument, the Court is bound to consider it. It was considered accordingly in the said judgment. She further submitted that there is no substance in the application and, therefore, it deserves to be rejected.

6. Learned advocate Ms. A.M. Raut is relying the following precedential laws :-

(1) **Kamlesh Verma .vs. Mayawati and others, reported in (2013) 8 SCC 320**, in which the law laid down in para no.20 is that review is maintainable on the following grounds. She pointed out that Section 114 of the CPC clarifies that for any other sufficient reason review can be entertained.

(2) **Sansar Chand Mela Ram .vs. Sham Lal Dhanpat Rai and another, reported in AIR 1957 Punjab 307**, in which para no.9 reads as under :

9. Admittedly, Section 144, Civil Procedure Code, has no application to the present case. The fact that the judgment-debtor described application as one under Section 151, Civil Procedure Code, did not preclude the Court from proceeding under Section 47, if that section was in fact applicable. A litigant is only to state the facts and the relief he seeks in his

pleadings, but not the law or particular section of the statute under which he comes.

That is a matter which is for the Court to decide. Mr. Nayar wants me to hold that since the judgment-debtor's application was headed as one under Section 151, Civil Procedure Code, the order of the executing Court ought to be regarded as one made under that section, and therefore no appeal against that order lay to the District Judge. To see whether an application comes under Section 47, Civil Procedure Code, substance of the application has to be examined and not the heading or description given to it by the party.

The question is whether Section 47, Civil Procedure Code, does or does not apply to the facts of the case. If it does, the order of the executing Court would be regarded as one made under that section and the appeal to the District Judge would be competent. As the order itself clearly indicates, the executing Court did proceed to decide the application treating it as one under Section 47, Civil Procedure Code. In the view that I hold, the contention has to be rejected.

(3) Kuriyan George .vs. Joseph George, reported in 2017 SCC OnLine Kerala 16831, in which it is held that the law need not be pleaded as per Order 6 Rule 13 of the CPC.

7. Argument no.2, according to the applicants, which was not considered while deciding the review application is as under :

“That, the judgment under review dated 29.9.2022 in fact records undisputed position about the knowledge of the death of the parties to the review application in the paragraph nos.3 to 5 of the judgment under review, therefore, the argument as regards Rule 10A of Order 22 cannot be allowed to be raised for the first time while hearing of the application for review.

8. This court, while deciding Civil Application No.1031/2024, by an order dated 26.09.2024 held that ground of argument no.1 is considered. Even if the ground of argument nos.1 and 2 are considered together, there is absolutely no difference in both the grounds. While delivering the judgment of review, this court held that advocate representing to the respondent who had died during the appeal was duty bound to communicate to the court that his client (respondent) is died and his duty continues even though his client is died as per Rule 10-A of Order 22 of the CPC. This was a decisive aspect of fact and law for the just decision of the review application which was not considered by this court while deciding the main appeal.

9. Learned advocate for the applicant fairly conceded the position of law that the law need not be pleaded. If the judgment (review) of this court is considered, even though the argument no.2 is added in the said judgment of review, the reasons about argument no.2 are also appearing in the same judgment that law need not be pleaded. Therefore, though the precedential law of **Artson Engineering Limited** (cited supra) on behalf of the applicant is not useful to give an opportunity to the applicants and to decide the review application on the point of argument no.2. Therefore, clarification and modification in the said judgment is not justifiable. Considering all these aspects and the precedential law cited on behalf of the applicants, this court is of view that if it is not helpful to them, there is no substance in this application. No any prejudice is caused to the applicants. No any purpose will serve if the application is allowed. Therefore, the argument of learned advocate for the

applicants is not acceptable. The application deserves to be rejected. The application is rejected.

10. Second Appeal No.135/2014 be scheduled for final hearing before the concerned court accordingly.

11. Stand over after vacation.

(SANJAY A. DESHMUKH, J.)

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