



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

CIVIL APPLICATION No.1031 OF 2024
IN
MISC. CIVIL APPLICATION (REVIEW) No.56 OF 2023
IN
SECOND APPEAL No.135 OF 2014

(Sarjabai w/o. Bapurao Ghawas (dead), through LR's and others Vs. Bapurao Sitaram
Metkar 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 appellants.
Mr. G.M. Kubde, Advocate for respondent.
Ms. A.M. Raut, Advocate for Respondent No.8A to 8F.

CORAM : SANJAY A. DESHMUKH, J.
DATE : 26th SEPTEMBER, 2024.

1. This is an application for speaking to minutes i.e. for adding the two points of argument of respondents in the judgment passed by this Court dated 3.8.2024 in Review Application No.56 of 2023.

2. According to the applicants' Advocate, two contentions of argument of the applicants Advocate were not transcribed in the said judgment which are as follows :

(i) That, the grounds as regards non-observance of Rule 10A of Order 22 of the CPC was neither a case of the review applicants either while arguing the second appeal nor in the grounds raised in the application for review of the judgment dated 29.9.2022.

(ii) "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.”

3. Learned Advocate for the applicant submitted that these two contentions are not transcribed by the Court in that Judgment. Therefore, the above two points of argument needs to be transcribed in the judgment dated 3.8.2024. He is relying upon the following precedential law :

(i) Artson Engineering Ltd. Vs. Indian Oil Corporation, 2015 SCC Online Bom 39 and Kotak Mahindra bank Limited Vs. Official Liquidator, 2012 SCC Online Gujrat 4339, in which Bombay High Court in para No.25 held as follows :

The Gujarat High Court further held 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. Paragraph 7 of the said judgment reads thus :-

"7. We have heard learned Counsel for the parties at length and we have also gone through the order of the learned Single Judge passed below the note for speaking to minutes. It is required to be noted that once, a judgment/order is pronounced and if, any party to the same wants any rectification of any typographical or clerical mistake regarding date or number, such a party may apply to the concerned Court for correcting such an error in the judgment/order. After dictating a judgment/order, if any, mistake on factual aspect has crept in while transcribing the same, same can be corrected by way of filing a note for speaking to minutes, by either-side. If argument of either side is missed in the order, then also, on such a note, the concerned Court can add such argument in the original

order to give complete effect to it. However, a note for speaking to minutes cannot be considered at par with a review application or in a given case with an application for clarification/ modification of an order. A note for speaking to minutes can never be considered to be an application of such a nature. Such a note is, therefore, not even given any number by the Registry. A note for speaking to minutes is, required to be entertained only for the limited purpose of correcting a typographical error or an error through oversight, which may have crept in while transcribing the same. The present note for speaking to minutes was filed only for the limited purpose of drawing the attention of the Court to a particular mistake and the scope of deciding such a note was, therefore, extremely limited. Surely, while deciding such a note, there is no/scope for modifying the original order or to give further direction in connection with the earlier order and as such the original foundation of the order cannot be changed by passing a subsequent order below note for speaking to minutes.

In the instant case, while passing the impugned order, the learned Single Judge has given further directions, and thereby, has virtually modified the original order. Such a course was not open to the learned Single Judge, while deciding a note for speaking to minutes. When a note for speaking to minutes is filed, it is not required to be argued, as if the Court is deciding the main issue and no judgment is required to be given below such a note. Since, the learned Single Judge has traveled beyond his jurisdiction in regard to the scope of deciding a note for speaking to minutes, we have no option but to set aside the impugned order. It is noteworthy that while admitting the present appeal, the earlier division bench of this Court stayed the impugned order, observing that the directions given by the learned Single Judge in the impugned order are contrary to the provisions of Section-529(A) and Section 530 of the Companies Act, 1956. As stated above, while deciding a note for speaking to minutes, there is no scope of giving any further direction in the matter."

4. Learned Advocate for respondents Shri Kubde and Ms. Anjali Raut submitted that there is no any legal scope to transcribe the argument in the judgment. It was considered by this Court. They submitted that law need not be pleaded. This

Court has given cogent reasons about the said arguments. That judgment is not challenged by the applicants in the Supreme Court. They are relying upon the following presidential law :

(i) **Akhil Bhartvarshiya Marwari Agarwal Jatiya Kosh and others Vs. Brijlal Tibrewal and others**, reported in (2019) 2 SCC 684, in which it is held that, ‘ *“Note for speaking to the Minutes” cannot be considered on a par with a review application or with an application for clarification/ modification of an order.*’ Nobody will dispute the ratio laid down in the above procedural laws submitted on behalf of both sides.

5. This Court in para Nos.9,10 and 12 of the said judgment of this Court in Misc. Civil Application (Review) No.56/2023 reads as under :

9. The learned Advocate Mr. Narwade for respondent Nos.1 to 4, 6 to 8 and 9(a), 9(c) and 9(e) to 9(h) submitted that there is no any legal and factual ground for considering the review of the judgment. He submitted that the judgment of first appellate Court is nullity, as it is delivered in the absence of legal representatives of respondent Nos.5, 9(b) and 9(d). He further submitted that there is no any explanation on the part of these applicants as to why legal representatives of the deceased respondents were not brought on record in first appeal. He is relying upon the authority of **Haridas Das Vs. Usha Rani Banik & Ors.**, reported in (2006) 4 SCC 78, para No.18 reads as under :

“18. It is also pertinent to mention the observations of this Court in the case of **Parsion Devi v. Sumiri Devi** (1997)8 SCC 715). Relying upon the judgments in the cases of **Aribam's** (1979)4 SCC 389) and **Smt. Meera Bhanja** (1995)1 SCC 170) it was observed as under :

“9. 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 the 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'."

10. The learned Advocate Mr. K. S. Narwade for respondents further submitted that there must be a mistake or an error apparent on the face of the record for decision of review application the judgment.

He is relying upon the procedural law of Ramrao Joti Godase & Ors., Vs. Kisan Joti Godase & Ors. , reported in 2012(2) Mh.L.J. 741, in which para No.12 reads as under :

"12. Following the ratio laid down by the Supreme Court in the case of Jaladi Suguna (supra) the conclusion is inevitable that the entire Appeal and Cross-objection before the District Court had abated. Hence on that ground itself the Second Appeal has to be allowed and the Decree of the Trial Court will stand restored. Hence I pass following order :

(i) Second Appeal is allowed. Impugned Judgment and Order dated 30/3/2010 in Civil Appeal No. 149/2004 in the District Court at Satara is quashed and set aside. It is held that the said Appeal had abated in its entirety. Consequently the Judgment and Decree dated 16/12/2003 passed by the learned 5th Joint Civil Judge, Jr. Division, Satara in R.C. Suit No. 679 of 1992 is the only Judgment which survives. It is made clear that if the appellants in Civil Appeal No. 149 of 2004 file an application for condonation of delay and setting aside abatement of the said Appeal as against the appellant Nos. 3 and 6 therein or if the respondents therein wish to adopt such course insofar as their cross-objections are concerned, such course would be open to the respective parties and passing of this order should not be construed as any expression of opinion on merits of such an Application(s) if filed in future."

12. First of all, this Court has to consider as to whether there is any legal ground to review the impugned judgment. The applicants have to establish that the impugned judgment is having mistake or there is an apparent error on the face of record for justification to exercise power of review as argued by learned Advocate Mr. K. S. Narwade for the respondents and the law laid down in the case of Haridas Das (cited supra).

6. This Court, in para No.9 of the said judgment of review considered the argument of the learned Advocate for the respondent preciously as follows :

“Learned Advocate for the respondent argued that there is no legal and factual ground for considering review of the judgment.”

7. From above, it can be seen that only some words remained to be typed in the said judgment, which are that “no ground as per Rule 10A of Order XXII of the CPC raised in the application for review.”

8. In the reasons of the said judgment this Court in para No.15 relied upon the Rule 10A of Order XXII of the CPC. Full opportunity was given to both sides to argue on the ground regarding Rule 10A of Order XXII of the CPC. Thus, opportunity was given to the respondents to argue on that legal point as per the principles of natural justice. In para No.14 this Court considered the argument of learned Advocate Mr. Narwade and lastly it was held that it is not acceptable.

9. It is settled that law “Law” need not be pleaded. Therefore, not raising ground under Rule 10A of Order XXII in application is not justifiable. The said argument though not transcribed in exact words as it is the sum and substance of the argument which 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 Court is bound to consider it. It is considered accordingly in the said judgment.

10. Thus, it is not necessary to transcribe the entire

argument as it is in the said judgment. The revision is decided on merit. There is limited scope to correct and transcribe something important which is not transcribed in the said judgment, if it goes to the root of the matter and interest of justice requires so. The object and the scope of Rule 2 of the Chapter XI of the Bombay High Court Appellate Side Rules, 1960 is limited to correct an apparent error or typographical mistakes in the names, numbers etc. No any prejudice is caused to the applicant by not transcribing detail argument in the said judgment. No any purpose will serve by allowing this application when the judgment is delivered on merit with reasons regarding point No.1 of the said argument of learned Advocate Mr. Narwade for applicants is not acceptable in this regard.

11. As far as Point No.2 in the argument as pointed out which alleged not to have transcribed by this Court in the said judgment, learned Advocate Mr. G.M. Kubde fairly conceded that it is not transcribed in the said judgment. Therefore, it needs to be added in the said judgment in view of ratio laid down in the precedential law of **Artson Engineering Ltd Vs. Indian Oil Corporation Ltd., 2015 SCC OnLine Bom 39** and **Kotak Mahindra Bank Ltd. Vs. Official Liquidator of M/s. Gujarat BD Luggage Ltd. and others, 2012 SCC OnLine Guj 4339** cited supra on behalf of this applicant. The argument No.2 deserves to be added in the said judgment. However, as held in the case of ***Artson Engineering Ltd*** (supra) that if any argument of either side is missed in the original order then also on such application concerned Court can modify the original order to give complete effect to it. But this Court while deciding this application cannot modify the said judgment, as if it is review application as held in the precedential law of **Akhil Bhartiya Marvari**, cited supra, on behalf of the

respondents. For that, both the sides must be heard and then on merit the second part of the argument pointed out in this application can be considered, if the applicants or any of them applies for it on or before 28th November, 2024. The application deserves to be partly allowed to the extent of argument No.2. Hence, the following order :

ORDER

The application is partly allowed as under :

- (i) The argument No.2 be added after para No.10 as para No.10A in the judgment in Misc. Civil Application (Review) No.56 of 2023. The said judgment be corrected and its corrected copy be uploaded.
- (ii) It is clarified that if application about argument No.2 is not moved on or before 28.11.2024 the said right to file application to consider argument No.2 shall be deemed to be waived.

(SANJAY A. DESHMUKH, J.)