



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12730 OF 2023

1. CHANDRAKANT S/O DATTATRAYA RUIKAR (DEAD)
THROUGH LEGAL REPRESENTATIVES

1-A Vivek S/o Chandrakant Ruikar

1-B Rahul S/o Chandrakant Ruikar

1-C Vidyadhar S/o Chandrakant Ruikar

1-D Sunita W/o Chandrakant Ruikar

Above all R/o.: Rui, Tq. Georai,
District Beed

**.. Petitioners
(Original Plaintiffs)**

Versus

1. MUKUND S/O SAWALARAMPANT RUIKAR

2. APARNA ASHOK VYAWHARE

**.. Respondents
(Original Defendants)**

...
Advocate for Petitioner: Mr. A. D. Sonkawade
Advocate for Respondent No.1: Mr. Arvind S. Deshmukh
...

**CORAM : ARUN R. PEDNEKER, J.
RESERVED ON : 22.08.2025
PRONOUNCED ON : 12.09.2025**

JUDGMENT:

1. Heard. With the consent of parties, the matter is taken
up for final hearing.

2. By the present petition, the petitioners challenges the impugned order dated 03.05.2023, passed below Exhibit-311 by the learned 2nd Joint Civil Judge Junior Division, Georai, District Beed, whereby the Hon'ble Judge was pleased to partially allow the application filed by respondent no.1 (Defendant No.1) under Section 114 of the Code of Civil Procedure, 1908 (CPC) seeking review of the order passed on 12.01.2023 below Exhibit-306.

3. The facts giving rise to the petition in brief are summarized as under.

The petitioners filed Regular Civil Suit No.130/2004 seeking perpetual injunction against the defendants with respect to that suit property and also praying for declaration that the sale deed bearing no.2041/2004, dated 20.04.2004 is not binding on the plaintiff. The petitioners filed an application at Exhibit-306, under Order VI Rule 17 read with Section 151 of the Civil Procedure Code, 1908 (*hereinafter referred as 'CPC'*) seeking amendment to the claim clause by adding declaratory relief of the plaintiff, so also, respondent no.2 being real sister of the deceased - original plaintiff, she is necessary for the adjudication of the dispute and, as such, sought amendment to implead respondent no.2 as a party defendant no.5 in the suit. On 12.01.2023, application at Exhibit-306 was allowed by the civil court.

Thereafter, respondent no.1 filed application for review under Section 114 of the CPC seeking review of order dated 12.01.2023, which is partly allowed by the impugned order dated 03.05.2023. By the impugned order, the civil court has partly reviewed it's order dated 12.01.2023 and partly dismissed the application for amendment to the extent of amending the claim clause of the plaint for adding declaratory relief.

4. The learned counsel for the petitioners has made two fold submissions. First submission is that once the application at Exhibit-306 is allowed it was not available to the subsequent judge taking over the suit to review the order passed on merits by his predecessor judge and order dated 12.01.2023, at Exhibit-306, should have been challenged by the aggrieved party in an appropriate appellate proceedings. Second submission is that, in any event, the amendment claimed is formal in nature and based on facts already pleaded in the plaint along with necessary prayer and necessary for clarity and for decision on merits of the case and the court has rightly allowed Exhibit-306.

5. Per contra, learned counsel appearing for respondent no.1 (Original Defendant No.1) has submitted that the suit filed by the plaintiff is for simplicitor injunction restraining the defendant from peaceful possession of the suit property and another prayer is

made in the plaint seeking declaration that sale deed dated 20.04.2024 is not binding on the plaintiffs. The respondent had earlier filed another application at Exhibit-68 pointing out that apart from prayer of injunction the suit contains prayer for declaration for which court fees are not paid by the plaintiff. The said application was replied by the plaintiff by Exhibit-72, wherein it is specifically pleaded by the plaintiff that there is no question of court fees; as the matter pertains to permanent injunction. Therefore, it is submitted that the plaintiff has specifically waived his rights to prosecute the second prayer for declaration that the sale deed is not binding upon the plaintiff. Thus, the amendment to the claim clause to include "declaratory relief" would run counter to the earlier stand of the plaintiff.

It is submitted that the plaintiff himself has filed application at Exhibit-184, wherein it is specifically mentioned that the suit is for permanent injunction and the application was filed for withdrawal of the suit and for liberty to file a fresh suit, which was rejected.

It is further submitted that the plaintiff has filed the suit in the year 2004 bearing RCS No.130/2004 and after contesting the above said two applications, the suit has proceeded for evidence and, at present, the suit is for cross-examination of the defendants and the application is filed by the plaintiffs under Order

VI Rule 17 r/w. Section 151 of CPC at Exhibit-306 and requested the court that at the time of filing of the suit, inadvertently and by slip of mind, the plaintiffs could not add the words "*for declaration*" in the claim clause of the plaint and, therefore, the plaintiffs may be allowed to amend the same and insert the same in claim clause and also to add defendant no.5 as party defendant. Exhibit-306 was allowed by the civil court by order dated 12.01.2023. Thereafter, the application is filed by the defendant / respondent for review of the order dated 12.01.2023. It is submitted by the defendant that the plaintiffs had filed reply to the earlier application filed by the defendant at Exhibit-68 and had waived their rights seeking declaration that the sale deed is not binding. The plaintiffs have themselves relinquished their rights and submitted before the civil court that the present suit is not for declaration and the plaintiffs are now estopped from reopening and taking a different stand, which they took at the time when the application at Exhibit-68 was being heard.

It is further submitted that the suit has substantially proceeded and that the suit is filed in the year 2004 and the rights for declaration are waived in the year 2005 by filing Exhibit 72, which is a Say on Exhibit 68 and the application for amendment is filed after the lapse of about 18 years in the year 2022.

6. It is further submitted that the law on the point of amendment is clear that, the pleadings can be amended liberally uptill stage of commencement of trial, but the proviso to Order VI Rule 17 CPC does not permit amendment to pleading after commencement of trial unless the party seeking amendment shows due-diligence i.e. the amendment prayed could not have been prayed earlier by the party.

CONSIDERATION:-

7. After hearing the learned counsel for the parties following points arise for consideration,

{1} whether the amendment application at Exhibit-306 could have been allowed by the civil court ?

and,

{2} if, the amendment is allowed, even if erroneously, whether the civil court could have reviewed the order allowing amendment ?

8. Perused the material on record and the submissions of the parties. The suit is titled for perpetual injunction and the prayers made in the suit are as under:

“

HENCE PRAYER

It is prayed that the suit of the plaintiff may kindly be decreed with cost.

1) That the defendant may kindly be restrained permanently from obstructing the peaceful possession over the suit land of the plaintiff.

2) That it is also declare that the sale deed No.2041/04 dated - 20.04.2004 is not binding on plaintiff.

3) That any other proper relief which may be fit may be awarded to plaintiff.”

9. After filing of the written statement the defendant / respondent also filed an application at Exhibit-68 with the prayer that the suit is insufficiently stamped as there is a prayer of declaration and ad-valorem fees on the consideration of the sale deed amount of Rs.02,05,000/- is required to be paid and the suit cannot be entertained unless and until sufficient court fees is paid and the suit be rejected due to insufficient court fees.

10. In response to Exhibit-68, reply was filed by the plaintiff that the suit is neither for cancellation of the sale deed nor is it for the sale deed to be declared null and void. In the reply application at Exhibit-72, it is also stated that the suit is primarily for perpetual injunction. It is also mentioned by the plaintiff in the alternative prayer that if the plaintiff succeed to prove that the sale deed is not out and out sale then it may declare that it is not binding on the plaintiff. It is also therefore stated that there is no reason for payment of ad valorem court fees on the value of the sale deed. In view of the reply filed, Exhibit-68 was dismissed, wherein it is observed that the main issue is that the suit is for

permanent injunction and, therefore, Section 6(iv)(d) of the Bombay Court Fees Act, 1959 is not applicable. It is specifically observed by the court in order dated 07.01.2006, on Exhibit-68, as under:

“ ...In this case upon plain reading of the plaint it appears that in the title column the plaintiff has mentioned as suit for permanent injunction in prayer column the plaintiff prayer for declaration of sale deed as not binding but the main relief is for permanent injunction therefore Sec. 6 (iv)(d) of Bombay Court Fees Act is not applicable.”

11. Application was later on filed by the plaintiff for withdrawal of the suit and for permission to be granted to file another suit on the same cause of action. However, the same was rejected by the trial court.

12. Thereafter, another application for amendment of plaint at Exhibit-306 is filed by the plaintiffs, wherein it is pleaded that in the claim clause of the suit be permitted to incorporate the clause of declaration that the sale deed is not binding and that defendant no.5 be added as a necessary party. Exhibit-306, Paragraph No.4, reads as under:

“4. That, however the plaintiffs while filing of the suit inadvertently and by slept of mind could not add the relief of not binding of sale deed No.2041 dated 20/04/2004 on plaintiffs in claim title of the suit hence plaintiffs are compelled to amend the plaint in claim title for incorporating the relief of not binding of sale deed in claim title as under, in claim title after the word injunction “and not binding of sale deed No.2041/04 dated 20/04/2004 on plaintiffs” is to be inserted in claim title by way of

amendment, likewise the plaintiffs intend to add defendant no.5 as a necessary party to the suit by name "Aparna W/O Ashok Vyawhare, age 63 years, occupation - household R/O sureshgad, Datta nagar, Navgan college road Beed TQ. Dist. Beed. As the plaintiffs has sought the relief of declaration of not binding of sale deed on plaintiffs, the above proposed defendant no.5 is a real sister of deceased plaintiffs chandrakant S/O Dattatraya Ruikar, and as such she is a necessary party to the suit,"

Reply was filed by the defendant to Exhibit-306 and after hearing the parties, the trial court was pleased to pass an order dated 12.01.2023, allowing Exhibit-306. It is observed in the order dated 12.01.2023, passed by the trial court that by the application for amendment, the nature of the suit is not changed except for it's claim clause. In the plaint sufficient pleading of declaration is already incorporated by the plaintiffs earlier. The plaintiffs should have brought such an amendment much prior in time and, since, the amendment does not change the nature of the suit and there are sufficient pleadings with prayer clause and mere change in the claim clause of the suit would not be hit by proviso to Order VI Rule 17 of CPC and, as such, the amendment was allowed. Thereafter, Review Application Exhibit-311 filed for reviewing the order dated 12.01.2023, passed in Exhibit-306, and, the order dated 03.05.2023 passed by the civil court on the Review Application Exhibit-311 is impugned in the present petition.

13. It is seen that in the plaint that there is sufficient pleadings stating that the sale deed is not binding upon the

plaintiffs and supported by prayer in the plaint.. The prayer for declaration that the sale deed is not binding upon the plaintiff is made and, as such, merely adding the words in the claim clause in addition to existing words suit for injunction would not change the nature of the suit. However, the arguments posed by the learned counsel for the respondent is that the plaintiff has given up the prayer for declaration while contesting Exhibit-68 and, since, he has given up the claim for declaration he was not required to pay ad valorem court fees. If the said declaratory relief was maintained and if the suit was not restricted to the prayer of injunction then the payment of ad valorem court fees ought to have been made by the plaintiffs.

In this regard, the Judgment of the Division Bench of this court in the case of **Dilip Khushalchand (Srisrimal) Jain Vs. Hardik Deepakbhai Ramani, 2023 (3) ABR 672 : AIRONLINE 2022 BOM 991**, is relevant as it has answered an reference made on account of conflict of decision of this court on ad-valorem court fees to the relief of declaration by a plaintiff who is not a party to the sale deed, more particularly, at paragraphs no.19, 20, 21 & 24, as under:

“19. Agreement which is not enforceable at law is void. An agreement is void when it is without consideration, it is executed by a person not competent to enter into a contract and by a person who is not of the age of majority, is not of sound mind and is not disqualified by any law to which he is subject. The contract is voidable if it is caused by coercion,

fraud or misrepresentation or by undue influence. In case of void agreement, the agreement has no legal existence. Therefore, when a Plaintiff seeks declaration that the agreement, instrument/deed is void, he wants the entire agreement to be cancelled. Void agreement has no sanctity in law. But this is not the case with the Plaintiffs who seek declaration that the instrument/deed is not binding on him. The instrument deed may be otherwise valid, but since the Plaintiff is not a party to the instrument/deed wants the declaration that the said instrument/deed is not binding on him. Therefore, in such cases, the Plaintiff need not seek declaration that the instrument or deed is void. Therefore, 6(iv)(ha) applies only to the persons who seek declaration that the agreement is void i.e. they challenge the very legality of the agreement and that it is void. But in case of the Plaintiffs who seek declaration that the instrument/deed is not binding on them, they do not question the execution of the agreement. Their only contention is that the instrument/deed is not binding on them. The deed or instrument may be otherwise valid inter parties. In such cases, the Plaintiffs are not required to seek declaration that the instrument/deed is void.

20. *As held in the case of Common Piru Caudhari (supra) there is a vast difference between a declaration that any sale or contract for sale is null and void and the declaration that sale or contract for sale has no binding effect. In the former case the very existence of the transaction is challenged whereas in the latter case existence of the contract or the instrument is not denied but its effect is sought to be made not applicable to the person who is not a party to the instrument or contract. This would mean that in the latter case, existence of contract is not denied but declaration is sought by the claimant that the instrument or contract is not binding on him but it binds the other executants. In the former case the existence of the contract itself is under cloud. In such a case the entire contract is sought to be cancelled whereas in the latter case only the contract to the extent of the claimant is sought to be not binding. Therefore, the Plaintiff in both the categories cannot be placed on the same pedestal. They have to be treated differently. For the reasons given above, it would be apposite to make distinction between the Plaintiff who seeks declaration of cancellation of sale deed and the Plaintiff who seeks avoidance of sale deed on the ground that he is not a party to the sale deed.*

21. *This distinction, if not made, will lead to anomalous results rather absurd results. A Plaintiff who is a party to*

the sale deed seeks avoidance of sale deed on the ground of fraud or mistake of fact, coercion, misrepresentation, etc. In such a case it would be prudent to compute the court fee on the consideration mentioned in the sale deed. But a person who is not a party to the sale deed is completely unaware of the sale deed having been executed. These transactions are executed behind his back. He comes to know of such a transaction only after the deed/instrument is executed. Because of subsequent events he gets the knowledge of the sale deed having been executed by a person who is not the owner of the property or by a person selling his own share and share of other co- owners as well. In such cases, the Plaintiff has not received consideration of the sale deed. It would be unreasonable for the plaintiff who has not received a single farthing or even a penny towards the consideration mentioned in the sale deed to pay the court fee on the entire consideration mentioned in the sale deed. In such cases, he would be penalized twice for no fault of his. First he has lost his property and second he has to pay court fee on the entire consideration. Legislature must not be having such an intention in mind. In the case of the Plaintiff who is a party to the sale deed stands on a different pedestal. He has received the entire consideration in the sale deed but for the reasons enumerated above he seeks avoidance of sale deed or cancellation of sale deed and seeking declaration that the instrument/deed is void.

24. *From the above discussion in our judgment, Section 6(iv)(ha) would be applicable only to the Plaintiff who is a party to the sale deed seeking declaration of avoidance of sale deed. It would not be applicable to the Plaintiffs who are not party to the instrument seeking declaration of avoidance of sale deed. Such Plaintiff would be governed by Section 6(iv)(j) as it is not susceptible to monetary evaluation.”*

This court in the case of Dilip Jain (*supra*) has held that when the suit is filed by the party to the sale deed for declaration that the sale deed is void, then ad-valorem court fees on the value of the property are payable in terms of Rule 6(iv)(ha) of the Maharashtra Court Fees Act. However, when a third party to the sale deed makes a prayer in the suit that the sale deed is not

binding upon him then the ad-valorem court fees in terms of Rule 6(iv)(ha) are not payable on the suit and, as such, the observations by the civil court that the plaintiffs have given up the claim for declaration in the reply to application at Exhibit-68, is erroneous. The civil court has observed that if the claim of declaration of non binding nature of sale was not given up by the plaintiff, he would have been liable to pay ad-valorem court fees on the value of the property is an erroneous observation in view of the Judgment of this court in the case of Dilip Jain (*surpa*). There is no amendment to the plaint giving up prayer for declaration and, as such, merely because the plaintiff has canvassed the argument in a particular manner it cannot be said that the claim of declaration is given up by the plaintiffs. So also, no such ad-valorem court fees become applicable on the suit, in the event, the prayer is made for declaration that the sale deed is not binding upon the plaintiff, if the plaintiff is not a party to the sale deed against which the declaration is sought.

14. The next submission, which is required to be noted is, whether the proviso to Order VI Rule 17 of CPC could have barred to the amendment to the claim clause. For ready reference, Order VI Rule 17 of CPC is quoted below:

“17. Amendment of pleadings

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

The Hon’ble Apex Court in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another, 2022 LiveLaw (SC) 729**, more particularly, at paragraph no.70 has summarised the law on amendment to the pleading, as under:

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed
(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and
(ii) to avoid multiplicity of proceedings, provided
(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is mala fide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking

*amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See **Vijay Gupta v. Gagninder Kr. Gandhi & Ors.**, 2022 SCC OnLine Del 1897)”*

15. The Hon’ble Supreme Court in the case of **Basavaraj Vs. Indira and others**, (2024) 3 SCC 705 , while considering Order VI Rule 17 of the CPC has held that the proviso to Order VI Rule 17 CPC provides that no application for amendment shall be allowed if the trial has commenced unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial and that merely some oversight, the same cannot be accepted as ground to allow the amendment of the pleadings at the fag end of the trial.

The Supreme Court also observed that in the case of **M. Revanna Vs. Anjanamma**, (2019) 4 SCC 332 the Hon’ble Supreme Court has held that an application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. Order 6 Rule 17 CPC prevents an application for amendment after the trial has commenced unless the court comes to the conclusion that despite due diligence the party could not have raised the issue earlier. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could

not be sought earlier. It is not a matter of right. The Supreme Court in **Basavaraj** (*supra*) further observed that in the case of **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons, (2009) 10 SCC 84** enumerated the factors to be taken into consideration by the court while dealing with an application for amendment. One of the important factor is as to whether the amendment would cause prejudice to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended claim would be barred on the date of filing the application.

The Supreme Court, thus, having analyzed the facts in the case observed that the suit is filed for partition and separate possession and by way of an amendment, relief of declaration of the compromise decree being null and void was also sought and the same would change the nature of the suit, which is impermissible and that a time barred claim to declare the compromise being null and void and, as such, amendment application was not allowed.

16. The Hon'ble Supreme Court in the case of **Dinesh Goyal Vs. Suman Agarwal (Bindal) and others, MANU/SC/1053/2024** observed that it is the settled rule that the court should adopt a liberal approach in granting leave to amend pleadings, however, the same cannot be in contravention of the statutory boundaries placed on such power. That, any and all delays in judicial processes

should be avoided and minimised to the largest extent possible, and should generally be, and are rightly frowned upon. However, not in all cases can delay determine the fate of a Suit. The court observed that the object of Order VI Rule 17 of Code of Civil Procedure which is aimed at preventing multiplicity or multiple avenues of litigation, subsumed under the umbrella of one dispute and, thus, although, there was no explanation on delay and due diligence on the part of the plaintiff, the amendment was allowed as to declare the Will as illegal after the trial had commenced.

17. Thus, considering the judgment passed in the case of Life Insurance , Dilip Jain, Basavaraj, Dinesh Goyal (*supra*), this court is of the view that the amendment of claim clause as prayed is formal and does not change the nature of the suit and the predicate facts along with prayer is already in the plaint and the amendment is necessary for clarity and adjudication of the dispute at hand. There is a prayer already made and the facts are already pleaded in the plaint that the sale deed is not binding on the plaintiffs. Thus, change in the claim clause is formal in nature, so also, it cannot be said that the plaintiff has introduced a new case or that he has given up his claim for declaration in view of his reply filed to the earlier application filed by the defendant for dismissal of the plaint for non payment of court fees by erroneously valuing the

suit. Proviso to Order VI Rule 17 of CPC would not defeat the application for amendment in pleadings in all cases of delay. This court can exercise its discretion in a case where the amendment is prayed after the commencement of trial and the party praying for amendment is not able to prove due diligence where the amendment is formal or consequential to the pleadings in the plaint and is necessary for pin-pointedly adjudication of the dispute. This court finds that the amendment prayed is not mala fide merely to delay the proceedings and, that, the amendment is necessary to the suit. The amendment is formal in nature and the foundational pleadings are already made in the plaint and the amendment is necessary for complete adjudication.

18. Order XLVII Rule 1 of the CPC provides that the review can be applied from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

19. It is to be seen that review is not an appeal in disguise and a mere fact that the different view on the same subject is possible, earlier judgment passed by the court cannot be reviewed. Review powers are to be exercised for the correction of the mistake or error apparent on the face of record and not as an appeal and the errors pointed should not require a long drawn process of reasoning.

20. While exercising the power of review under Section 114 of the CPC, the civil court has to appreciate that there is a distinction between the erroneous decision and the error apparent on the face of record. The erroneous decision can be corrected by the higher court and only error apparent on the face of record can be corrected by exercising review jurisdiction. The review petition has a limited purpose and cannot be allowed as an appeal under disguise. In the instant case, the application at Exhibit-306 is adjudicated on merits. However erroneous, the review court does not have the power to re-examine the issue on merits. Thus, the impugned order is erroneously passed in exercise of the review jurisdiction conferred upon it and, thus, is liable to be set aside.

21. Thus, this court answers both the points referred at paragraph no.7 accordingly i.e. point no.{1} in affirmative; the order dated 12.01.2023 on the amendment application at Exhibit-

306 is accordingly maintained and, point no.{2} in negative; that the civil court has exceeded it's jurisdiction to review the order passed by the predecessor Judge on merits.

22. The writ petition is accordingly allowed. The impugned order dated 03.05.2023, passed by the learned 2nd Joint Civil Judge, Junior Division, Georai, District Beed below Exhibit-311 is set aside and the order dated 12.01.2023, passed by the learned 2nd Joint Civil Judge, Junior Division, Georai, District Beed below Exhibit-306 is maintained.

23. The Writ Petition stands disposed of accordingly.

[ARUN R. PEDNEKER, J.]

marathe