



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 698 OF 2023**

1) M/s Concan Constructions Pvt. Ltd.,
Through its Managing Director,
Mr. Preetam Masurkar,
Aged 59 years,
Having its registered office at 201,
Raykar Manor, Kaikini Road,
Karwar, Karnataka 581301.

... Petitioner***Versus***

1. The Mormugao Port Authority,
Formerly known as Mormugao Port Trust,
Through its Chairman,
With its office at Headland, Sada,
Vasco-Da-Gama, Goa.

... Respondents

Mr. Nigel Da Costa with Mr. Vishal Sawant, Advocates for
the Petitioner.

Mr. Yogesh V. Nadkarni with Mr. Nilay Naik, Advocate for
the Respondent.

CORAM**: VALMIKI MENEZES, J.****DATED****: 25TH MARCH, 2025.****ORAL JUDGMENT:**

1. Heard learned Advocates for the parties.

2. Rule. Rule is made returnable forthwith; at the request of and with the consent of learned Advocates for the parties, the matter is finally heard and disposed of. Learned Advocate Mr. Vishal Sawant waives service on behalf of Petitioner and learned Advocate Mr. Nilay Naik waives service for the Respondent.

3. This Writ Petition under Article 227 of the Constitution of India impugns order dated 17.04.2023, passed by Civil Judge Senior Division at Vasco Da Gama, rejecting the Petitioner's Review application dated 29.01.2019, in CMA 05/2019/B. The Review application was filed before the Civil Court in Special Civil Suit No. 11/2011, (where the Petitioner is the original Plaintiff and Respondent is the Defendant therein) to seek a review of Judgment and Decree dated 21.12.2018, rejecting the Petitioner's claim in the suit.

4. The rival claims of the parties arose from a Contract dated 25.02.2011, wherein the Petitioner was contracted to construct, repair, and modify an underground water tank. The Contract came to be terminated by the Respondent on 16.06.2011, whereas the Petitioner filed Special Civil Suit No. 11/2011, wherein it sought a Decree of declaration that the termination of the Contract by the Respondent was illegal and void. The Petitioner claimed damages arising from the wrongful termination of the contract.

5. Following its notice for termination of the Contract on 16.06.2011, the Respondent filed Regular Civil Suit No. 106/2013, in which it claimed compensation of Rs. 4,04,379/-(Rupees Four Lakhs Four Thousand Three Hundred and Seventy Nine only) with interest thereon for non-completion of the contract within the stipulated time. The trial in both these suits was consolidated, and a common Judgment and Decree was passed by the Civil Court on 21.12.2018, in which Petitioner's Special Civil Suit No. 11/2011 was dismissed and the Respondent's Regular Civil Suit No. 106/2013 was decreed.

6. The Petitioner challenged this Decree insofar as it decreed Regular Civil Suit No. 106/2013 in favour of the Respondent, by filing a First Appeal bearing RCA No. 15/2019 before the District Court at Margao, which by its Judgment and Decree dated 25.10.2021, set aside the decree passed in Regular Civil Suit No. 106/2013 and remanded the case back to the Civil Court for the fresh deciding qua the claim in Regular Civil Suit No. 106/2013 of the Respondent. The matter is pending disposal.

7. In the meanwhile, the Petitioner filed a Review application on 29.01.2019(CMA No. 05/2019/B), seeking a review of Judgment and Decree dated 21.12.2018 with respect to the dismissal of its suit (Special Civil Suit No. 11/2011). This application was dismissed by the impugned order dated 17.04.2023, against which the present petition has been filed.

8. Mr. Yogesh Nadkarni, learned Advocate appearing for the Respondent raised a preliminary objection to the maintainability of this petition. He contends that a Writ Petition against an order rejecting an application for review of a Judgment and Decree was not maintainable, since the grounds for review essentially would be those, which are required to be raised in the challenge to the Judgment and Decree by way of a First Appeal. He submits that in the absence of any challenge to the Decree passed by the Trial Court on 21.12.2018, insofar as it rejects the Petitioner's suit, the present petition is not maintainable. He relied upon a Judgment of the Supreme Court in *Rahimlal Bathu and ors V/s Ashiyal Beevi*, reported in **2023 SCC OnLine SC 1226**, to contend that where a review is rejected on merits against the appealable Decree, the remedy lies in filing of a First Appeal against the Decree. It submits that neither a Revision application under Section 155 of Civil Procedure Code, nor a Writ Petition under Article 227 of the Constitution of India would lie.

9. Mr. Nigel Da Costa Frias, learned Advocate appearing for the Petitioner submits that a Writ Petition would be maintainable since the relief sought therein is actually for setting aside of the order rejecting the review application; he contends that the Trial Court has not decided, the review application on the grounds raised therein. He submits that, had the Review Court addressed itself to specific grounds raised in the application, i.e. documents by which the Managing Director of the Petitioner was authorized to depose on behalf of the Petitioner, the Review Court would have come to a

different conclusion from the one arrived at in impugned order. He submits that the High Court, in exercise of jurisdiction under Article 227 of the Constitution of India can always correct the impugned order and remand the matter back to the Review Court to consider the application afresh and after considering the documents, authorizing the Petitioner's Managing Director to depose.

10. In ***Rahimal***(supra), the Supreme Court has considered the very same question that has arisen in the present petition i.e. whether a Writ Petition or a Revision application is maintainable against an order refusing review on merits when the original Judgment and Decree has not been challenged and has been left intact. In that Judgment, the Hon'ble Supreme Court has considered the scope of a Revision application under Section 115 of Civil Procedure Code which is akin to the supervisory jurisdiction Under Article 227 of the Constitution of India and has further considered the provisions of Order 47 Rule 1 of Civil Procedure Code read with the provisions of Order 41 Rule 21 of Civil Procedure Code and has held thus:

“25. What is clear from the above observations is, that where the review is allowed and the decree/order under review is reversed or modified, such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated, reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law. But where the review petition is dismissed, there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or Court

shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition.”

“26. Apart from above, there is another reason also for a revisional court not to entertain a revision against an order-rejecting on merits an application for review of an appealable decree, which is, if the revisional court sets aside or modifies or alters a trial court's decree, the decree of the trial court would merge in the one passed by the revisional court. In consequence, the right of the party aggrieved by the trial court's decree to file an appeal would get affected. Further, there may be a case where a person is aggrieved by a finding of the trial court on any issue, even though the trial court's decree may be in its favour. In that scenario, if there is an appeal by a party aggrieved by the decree, that person would have a right to take an objection against the adverse finding with the aid of the provisions of Order XLI, Rule 22 of the CPC, but in the event of there being no appeal against the decree, such a person would lose its right to take an objection, under Order XLI, Rule 22 of the CPC, against that adverse finding.”

“27. No doubt revisional powers may be available on limited grounds, primarily to correct jurisdictional errors, but still it is a part of the general appellate jurisdiction of the High Court as a superior court. In Shankar Ramchandra (supra), this Court observed:

"6. Now when the aid of the High Court is invoked on the revisional side it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the court below. Section 115 of the Code of Civil Procedure circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior court. It is only one of the modes of exercising power conferred by

the statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense. We do not, therefore, consider that the principle of merger of orders of inferior courts in those of superior Courts would be affected or would become inapplicable by making a distinction between a petition for revision and an appeal."

"28. In the instant case, the trial court, which had jurisdiction to allow or dismiss the review application, dismissed the review application on merits. If it had granted the review, the aggrieved party would have had a right to file an appeal under Order XLIII Rule 1(W) read with Order XLVII Rule 7 of the CPC. And if it had allowed the review and simultaneously altered/modified/reversed the decree, the aggrieved party would have had a right to file an appeal against the said decree. But, if the revisional court does the same, as has been done by the High Court while passing the impugned order, an anomalous situation would arise. The decree passed by the trial court would stand modified by the High Court. Therefore, if the defendant(s) against whom the decree is passed were to challenge the same, they would be at a disadvantage on account of the merger. Whereas, from the stand point of the plaintiff-respondent, even if we assume that the trial court's decree is inconsistent with its finding on the validity of the gift in favour of Khaja Mohideen, she can challenge the same in an appeal against the decree even after rejection of the review application. In the event of such an appeal by the plaintiff, the defendant(s), even if they had themselves not filed an appeal against the trial court's decree, would have a right to take objection to the adverse finding(s) under Order XLI Rule 22 of the CPC. However, if the revisional court's order is allowed to stand, owing to modification of the decree by the revisional court, to which in normal course an appeal would lie, the right of an appeal to the aggrieved party would get seriously prejudiced."

"29. For all the reasons above, we are of the considered view that where an appealable decree has been passed in a suit, no revision should be entertained under Section 115 of the CPC against an order, rejecting on merits a review of that decree. The proper remedy for the party whose

application for review of an appealable decree has been rejected on merits is to file an appeal against that decree and if, in the meantime, the appeal is rendered barred by time, the time spent in diligently pursuing the review application can be condoned by the Court to which an appeal is filed.”

11. In the present case, the Judgment and Decree sought to be reviewed has not been challenged independently by way of a First Appeal. The Petitioner sought to challenge that part of the very same Judgment that has decreed the suit of the Respondent i.e. Regular Civil Suit 106/2013. In fact, in the present case, the Petitioner has succeeded in the First Appeal, and the Judgment and Decree have been set aside to the extent that the Respondent's suit was decreed; the matter has now been remanded back to the Trial Court for fresh consideration of the evidence on the record.

12. The ratio laid down by the Hon'ble Supreme Court in ***Rahimal*** (supra), it would apply in all force to the facts of the present case. The present petition would clearly not be maintainable, since if the Review application were allowed, the Respondent would have recourse to file an Appeal from Order under Order 43 Rule 1(w) of the Civil Procedure Code. This means that if the present Writ Petition were allowed and the Decree in Special Civil Suit No. 11/2011 were set aside, the Respondent would be losing an opportunity of challenging this Court's order further in an Appeal. This is precisely what the Hon'ble Supreme Court has allowed in ***Rahimlal*** (Supra).

13. In that view of the matter, the present Writ Petition is dismissed on the preliminary objection, as being not maintainable.

14. Needless to state, if permissible at law and subject to law of limitation, it is open for the Petitioner to file a First Appeal to challenge the Decree dated 21.12.2018, insofar as it dismisses Special Civil Suit No. 11/2011 in a First Appeal and to raise in such Appeal all such grounds raised in the Review application.

15. Rule stands discharged.

16. The Writ Petition is dismissed.

VALMIKI MENEZES, J.