



Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
MISCELLANEOUS CIVIL APPLICATION NO.485 OF 2024
IN
CIVIL APPLICATION (REVIEW) NO.2882 OF 2024
(FILING)
AND
CIVIL APPLICATION (REVIEW) NO.2882 OF 2024
(FILING)
IN
APPEAL FROM ORDER NO.31 OF 2023

Victor Santan D'Cunha
(since deceased through legal heirs)
And 3 Ors

.. Applicant.

V/s.

Francis Manuel D'Cunha And 8 Ors.

... Respondents.

Mr. Valerian D'Cunha, Applicant No.1(a) *in person*.

CORAM:- VALMIKI MENEZES, J.

DATED:- 27th January, 2025.

ORAL ORDER:

The Appeal from Order No.31/2023 has been filed to assail the order dated 24.07.2023 before this Court. Whilst considering whether the cross-objection led against the findings rendered by the trial Court in an Appeal filed by the Appellant challenging the decree, this Court by its Order dated 07.03.2024 held that under

Order 41 Rule 22 CPC, the Applicant could not file a cross-objection to the decree since he was in fact supporting the decree and not challenging any part of it. Subsequently, the Appellant herein filed a review application seeking a review of this Court's order dated 07.03.2024 citing a judgment of the Supreme Court in ***Saurav Jain & Anr v/s. A.B.P. Design & Anr*** dated 05.08.2021 passed in Civil Appeal No.4448 of 2021.

2. It is the Applicant's contention that the judgment of this Court is contrary to a binding precedent of the law laid down by the Supreme Court that provisions of Order XLI Rule 22 CPC could be invoked to file a cross-objection even against the findings in a judgment and decree without challenging any part of the judgment. Along with the application for review, an application for condonation of delay has also been filed.

3. I have considered whether there are sufficient reasons to condone the delay, in the light of the legal submissions made in the review application. The judgment rendered by the Supreme Court in ***Saurav Jain*** (supra) refers to an earlier view of the Supreme Court taken on the very same subject matter in ***S. Nazeer Ahmed v/s. State Bank of Mysore***¹ in which the Supreme Court re-considered the law as it stood prior to 1976 and law under the amended provisions of Order XLI Rule 22 CPC after the amendment of 1976. In ***Nazeer***

¹ (2007) 11 SCC 75

Ahmed (supra), an earlier judgment of the Supreme Court in *Banarsi & Ors. v/s. Ram Phal*² was considered and it was held therein that in the pre-amended CPC, Appeal was withdrawn, the Respondent had no recourse to challenge the findings rendered in the judgment under Appeal if it was supporting the judgment and the decree. It is in those facts that the Supreme Court held that where the Appeal is withdrawn, the Respondent will still have the right of objecting to the findings which go against him.

4. *Banarsi & Ors. v/s. Ram Phal* (supra) and *S. Nazeer Ahmed v/s. State Bank of Mysore* (supra) were considered by the Supreme Court in *Saurav Jain* (supra) to conclude that the provisions of Order XLI Rule 22 are to be read disjunctively and only where the part of the decree has been assailed by the Respondent, should a memorandum of cross-objection be filed. Otherwise, the Supreme Court has held, it is sufficient to raise a challenge to an adverse finding of the Court of first instance before the Appellate Court without a cross-objection. This view clearly supports the view taken by the Supreme Court in the judgment sought to be reviewed, and as such, the judgment under review calls for no interference.

5. The review application along with the application for condonation is, therefore, dismissed.

² (2003) 9 SCC 606

6. Needless to state, since the Applicant herein has filed objections to the findings arrived at by the trial Court in its judgment dated 24.07.2023, in the form of what he calls “cross objections”, this strictly is not cross objections in terms of Order XLI Rule 22 CPC, but is written arguments against findings arrived at by the trial Court which are contrary to the case of the Applicant/Respondent in Civil Appeal No.18/2023 which is pending adjudication. The Appellate Court, i.e. the District Court in Regular Civil Appeal No.18/2023 shall consider the application dated 23.06.2023, styled as “cross-objection” as written arguments state that the Applicant herein/Respondent in the Appeal supports the decree and judgment dated 16.01.2023 to raise the objections to the findings rendered therein as stated in the application dated 23.06.2023, which may be argued by him.

7. With these clarifications, the application for condonation of delay and the review application stands dismissed.

VALMIKI MENEZES, J.