



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

MISC. CIVIL APPLICATION NO. 516 OF 2022

IN

FAMILY COURT APPEAL NO. 61 OF 2016

Satish Vinayakrao Sakhare, Aged about
38 years, Occ: Labour R/o Satnawari,
Tq. and District Nagpur

... Applicant/
Respondent

// VERSUS //

Sau. Kirti Satish Sakhare, aged about 31
years, Occ : Household, R/o Maya
Nagar, Amravati, Tq. and District
Amravati

...Non-applicant/
Appellant

Shri N.S.Warulkar, Advocate for applicant.
Mrs. Shilpa Giratkar (Giripunje), Advocate for non-applicant

CORAM : NITIN B. SURYAWANSHI &
PRAVIN S. PATIL, JJ.

Reserved on : 3rd February, 2025.

Pronounced on : 10th March, 2025.

JUDGMENT : (Per : Pravin S. Patil, J.)

Heard.

2. This Misc. Civil Application is filed by the applicant/husband (applicant hereinafter referred as 'husband') seeking review of the judgment and order dated 30th September, 2021 passed in Family Court Appeal No. 61 of 2016, whereby the Decree of Divorce dated 4th April, 2015 granted by the Family Court, Amravati was set aside.

3. The principal ground for review is that husband had remarried before filing of an Appeal by non-applicant/wife (non-applicant hereinafter referred as 'wife'), which was not recorded nor considered by this Court while passing the judgment under review. It is further contended that failure to consider the implication of Section 15 of the Hindu Marriage Act, 1955 (for short hereinafter referred to as 'the Act') amounts to an error apparent on the face of record, warranting review of the judgment.

4. Heard Shri N.S.Warulkar, learned Advocate appearing for husband and Mrs. Shilpa Giratkar, learned Advocate appearing on behalf of wife.

Brief facts of the matter.

5. The marriage of the present husband was solemnized with wife on 9th June, 2009 as per the Hindu rites and custom. However, after marriage there was dispute between them, and therefore, husband filed Petition No.A-5/2014 under Section 13(A) of the Act for dissolution of marriage before the Family Court, Amravati. The learned Principal Judge, Family Court, Amravati vide judgment and order dated 4th

December, 2015 allowed the Petition and thereby dissolved the marriage by invoking the provisions of Section 13(A) of the Act. The wife under Section 19 of the Family Courts Act, 1984 filed Appeal before this Court on 1st April, 2016 along with an application for condonation of delay of 11 days. Wife also prayed for stay to the judgment and order dated 4th December, 2015 passed by the Family Court.

6. Applicant-husband opposed the application for condonation of delay, by raising ground that as per Section 19(3) of the Family Courts Act 1984, limitation for preferring appeal is 30 days. As such, there is a delay of 87 days. Further stated that after expiry of limitation period to file appeal, he has performed re-marriage.

7. This Court by order dated 27th September, 2016 condoned the delay caused in filing appeal by wife, however by recording submissions of husband that he has remarried, rejected the application for stay.

8. Thereafter by judgment dated 30th September, 2021, this Court allowed the appeal filed by wife and quashed and set aside the judgment and decree passed by the Family Court, Amravati in Petition

No.A-5/2014 dated 4th December, 2015. Accordingly, decree of divorce / dissolution of marriage between husband and wife was revoked.

9. The husband therefore moved this Misc. Civil Application for review stating that after expiry of period of limitation period, he has remarried. But this material aspect was not considered at the time of deciding the appeal on merits. Therefore, he seeks review of judgment and order dated 30th September, 2021 passed by this Court.

Submissions of husband.

10. Husband is seeking review by invoking the powers under Order XLVII Rule 1 of Code of Civil Procedure. It is the submission of the husband that under this provisions of law, the powers of review can be exercised, if there is mistake or error apparent on the face of record or for any other sufficient reason. According to him, the word 'sufficient reason' is wide enough to include the misconception of fact or law by a Court or even by Advocate. He submitted that aspect of remarriage was not considered while deciding Family Court Appeal on merits. Infact on account of remarriage, the Family Court Appeal had become infructuous.

Therefore, it is a fit case for review of judgment and order dated 30th September, 2021.

11. According to him, as per Section 15 of the Act, remarriage is permissible, if the wife fails to file Appeal within the time period prescribed for preferring the Appeal. In the present case, admittedly, wife did not file appeal within the period of limitation. However, in the entire judgment and order delivered by this Court, there is no consideration to this material aspect, which according to him is an error apparent on the face of record. Husband stated that non consideration of this material issue in final judgment is causing great prejudice in his married life. Therefore, it is necessary to review the judgment and order dated 30th September, 2021.

Submissions of wife.

12. Learned counsel for the wife supported the judgment and order of this Court by stating that there is no mistake apparent on the face of record.

13. She further submitted that, it was for the husband to bring it to the notice of this Court implication of Section 15 of the Act at the time of final hearing. Such ground cannot be allowed for the first time in review application.

14. She stated that as per settled position of law, powers of review cannot be exercised by raising ground which was not argued before the Court at the time of final hearing. Accordingly, she submitted that, application being devoid of merit, the same deserves to be rejected.

Analysis and conclusion.

15. It is a matter of record that divorce petition filed by husband bearing No. A-5/2014 was allowed by the Family Court, Amravati by its judgment dated 4th December, 2015, whereby the marriage between husband and wife was dissolved.

16. Section 19 of the Family Courts Act, 1984 provides period of 30 days of limitation for preferring an appeal against the Family Court decision. By filing appeal on 29th March, 2016, wife challenged the decision of the Family Court. Thus, appeal was filed after a delay of 87

days. Along with appeal, wife has filed Civil Application No. 1442 of 2016 for condonation of delay and also Civil Application No. 1443 for grant of stay.

17. Husband by filing reply to this application specifically contended that after expiry of limitation period to prefer appeal against the judgment and order of Family Court, he has entered into a wedlock with Padma Ashokrao Dehankar on 30th March, 2016. The said marriage is duly registered on 6th April, 2016 in the office of Registrar of Marriage under the provisions of Maharashtra Regulation of Marriage Bureaus and Registration of Marriage Act, 1998.

18. This Court by order dated 27th September, 2016 condoned the delay. However, by recording the contentions of husband that he has performed marriage after period of limitation by filing appeal, rejected the application for stay filed by the wife.

19. Section 15 of Hindu Marriage Act provides as to when divorced person may marry again which reads thus:

15. Divorce persons when may marry again- When a marriage has been dissolved by a decree of divorce and either there is no right of

appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.”

20. Thus, it is admitted position on record that wife did not file appeal within the period of limitation of 30 days and husband had performed marriage after the period of limitation of 30 days expired.

21. Unfortunately, neither of the parties brought the fact of remarriage of husband to the notice of this Court, at the time of final hearing of the appeal. Due to which this Court did not have the occasion to consider the effect of Section 15 of the said Act at the time of deciding the appeal. In the facts of the present case, since the effect of Section 15 of the Act has direct bearing on the judgment under review, delivered by this Court, non consideration of aspect of remarriage and effect of Section 15 has materially affected the findings recorded by this Court in the judgment under review.

22. Non consideration of effect of marriage of husband after the period of limitation by filing the appeal is over, in terms of Section 15 of the Hindu Marriage Act is an error apparent on the face of record and

therefore we are of the view that review application deserves to be allowed.

23. We are supported by following decisions of the Hon'ble Apex Court on the point of review.

Hon'ble Supreme Court of India in the case of Lily Thomas and others vs. Union of India and others (2000) 6 SCC 224 has observed:

52. The dictionary meaning of the word "review" is "the act of looking; offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in **Patel Narshi Thakersh and Ors. v. Pradyunman singh ji Arjun singh ji (1971) 3 SCC 884** held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of Justice. Law has to bend before Justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in **S. Nagaraj and Ors etc. v. State of Karnataka 1993 Supp.(4) SCC 595** held: (SCC 619-20, para 19)

19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean

strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* AIR 1941 FC 1, the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* (1836) 1 Moo PC 117 that an order made by the Court was final and could not be altered:

‘...nevertheless, if by misprision in embodying the judgments, errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in....The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies. Basis for exercise of the power was stated in the same decision as under:

‘It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame,

the party has not been heard and an order has been inadvertently made as if the party had been heard.’

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And Clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

Hon’ble Supreme Court of India in the case of Board of Control for Cricket in India and anr. Vs. Netaji Cricket Club and others (2005) 4 SCC 741 has held as under:

“89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not

only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*".

Hon'ble Supreme Court of India in the case of Rajender Kumar and others Vs. Rambhai and others AIR 2003 SC 2095 has held in paragraph 5 as under :

“5. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.”

Hon'ble Supreme Court of India in the case of State of West Bengal and others Vs. Kamal Sengupta and another (2008) 8 SCC 612 has held in paragraph 22 as under :

“22. The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case

and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal cannot sit in appeal over its judgment/decision.”

In the same judgment, Hon’ble Apex Court also relied upon the decision in the case of Sir Hari Sankar Pal Vs. Anath Nath Mitter, 1949 FCR 36 and in paragraph 18 has observed as under :

"18. That a decision is erroneous in law is certainly no ground for ordering review. If the Court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the Court disposes of a case without advertent to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order XLVII, Rule 1, Civil Procedure Code. "

Hon’ble Supreme Court of India in the case of S. Bagirathi Ammal V. Palani Roman Catholic Mission (2009) 10 SCC 464 has held in paragraph 12 as under:

“12. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it

must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set at right by reviewing the order....”

And in the case of *Inderchand Jain Vs. Motilal (2009) 14 SCC 663*,

the Hon’ble Supreme Court of India in paragraph 9 has held as under :

“9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.”

24. In the light of aforesaid ratio and facts of the present matter, we are of the considered view that aspect of subsequent marriage of husband, considering the provisions of Section 15 of the said Act has direct bearing on the judgment under review. Since, this aspect goes to the root of the matter, non consideration of the same is an error apparent on the face of record and same amounts to sufficient cause to invoke the power of review under Order XLVII Rule 1 of the Code of Civil Procedure.

25. For the above reasons, the Misc. Civil Application No. 516 of 2022 is allowed by setting aside the judgment and order dated 30th September, 2021 passed in Family Court Appeal No. 61 of 2016.

26. Family Court Appeal No. 61 of 2016 is restored, for deciding the same on its own merits.

27. Fees of the Appointed Counsel for wife (non-applicant) be paid as per the Rules within four weeks from the date of uploading of this judgment.

[PRAVIN S. PATIL, J.]

[NITIN B. SURYAWANSHI, J.]