



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

CIVIL REVISION APPLICATION NO. 121 OF 2024

Mehar Tabassum w/o. Ashfaque Ahemad,
 Aged about 63 years, Occupation: Agriculturist,
 through her power of attorney holder namely
 Mohd. Ashfaque Ahmad Mohd. Abdul Qadar,
 Aged about 64 years, Occupation : Retired,
 R/o. Washim By-pass Road, Near Hussaini
 Madarsa, Akola, Tah. and Dist. Akola.

... **APPLICANT**
 (Ori. Defendant)

...VERSUS...

1. Mohd. Yunus Sk. Budhan,
 Aged about 40 years,
 Occupation : Agriculturist and Businessman,
 R/o. Firdos Colony, Near Malipura, Akola,
 Tah. and Dist. Akola.
2. Sameer S/o. Dadarao Patil,
 Aged about 39 years,
 Occupation : Legal Practitioner,
 R/o. Amankhan Plots, Near Khandelwal City Scan
 Centre, Akola, Tah. and Dist. Akola.
3. Mohd. Jawed Mohd. Qumar,
 Aged about 40 years, Occupation : Businessman,
 R/o. Jai Hind Chowk, Near Masjid, Old City,
 Akola, Tah. and Dist. Akola.

... **NON-APPLICANTS**
 (Ori. Plaintiffs)

 Mr. N. B. Kalwaghe, Advocate for the Applicant.
 Dr. Renuka Sangram Sirpurkar a/w. Mr. K. R. Giripunje, Advocate for
 Non-applicants.

CORAM : MRS. VRUSHALI V. JOSHI, J.
JUDGMENT RESERVED ON : 16.07.2025
JUDGMENT PRONOUNCED ON : 22.07.2025

JUDGMENT :

1. **Rule.** Rule is made returnable forthwith. Heard finally by
 consent of learned Counsel appearing for the parties.

2. The applicant has challenged the order dated 27.03.2024 passed by 5th Jt. Civil Judge Senior Division, Akola thereby allowing the application filed by the non-applicants for restoration of the Civil Suit.

3. The facts in brief are as under :

The non-applicants have filed a civil suit for specific performance of contract and alternatively for refund of earnest money. Special Civil Suit No.2/2020 was pending before the Trial Court for evidence. As the non-applicants failed to lead the evidence, on 14.10.2022, the Trial Court has adjourned the matter as a last chance, otherwise, the matter would be disposed of for want of prosecution. On 19.10.2022, the non-applicants failed to appear and lead the evidence. On that day, the Court has passed the order and dismissed the suit for want of prosecution. Thereafter, the non-applicants have filed application under Order 9 Rule 9 of the Code of Civil Procedure for restoration of civil suit. In said matter, the notices were issued, the said application was proceeded *ex parte*. The Counsel for the applicant was not aware about it. The *ex parte* order was passed on 10.01.2023. After the said order, on 12.01.2023, the non-applicants have withdrawn said application and on 12.01.2023, the said application was disposed of as withdrawn. Another application bearing M.J.C. No.768/2023 was filed by the non-applicants thereby giving different reasons for non-appearance in the proceedings. The said application was contested by

the applicant. At that time, the non-applicant was aware about pendency of the earlier application and withdrawal of said application. Said fact was concealed by the non-applicants and the Trial Court has allowed the application. As the Court has passed the order and restored the application, the applicant has filed this revision application.

4. The learned Counsel for the applicant has stated that, though earlier application was pending, another application was filed by giving totally different reasons for restoration. In second application, the non-applicants have stated that there was a settlement between the parties and due to medical problem of non-applicant No.3, they failed to appear before the Court. Considering the reasons given by the non-applicants, the application was restored.

5. The learned Counsel for the applicant has stated that though the order was obtained by the non-applicants by suppressing the fact about filing of the earlier application and withdrawal of it, the restoration application was allowed. Challenging the said order, the applicant has filed this application.

6. The non-applicants have opposed the application and denied the contents of the application. Though the non-applicants have denied about suppression of the fact of the earlier application, the non-applicants

have admitted that during the pendency of the earlier application, the another application for restoration was filed and, therefore, the earlier application was withdrawn. At that time, the non-applicants were contesting the said application. The applicant has not raised any objection about earlier application. The non-applicants in this case have challenged maintainability of Civil Revision Application against the said order. The preliminary objection was raised about the maintainability of the present Civil Application.

7. The learned Counsel for the applicant has stated that as per the provisions of Section 115 of the C.P.C., the revisional jurisdiction of this Court is limited to three specific contingencies. (i) when the subordinate Court has exercised a jurisdiction not vested in it by law, or (ii) when a subordinate Court has failed to exercise a jurisdiction i.e. lawfully vested in it and (iii) when subordinate Court while exercising of its jurisdiction has acted illegally or with material irregularities. None of the aforementioned contingencies arise in the present case so as to warrant invocation of revisional jurisdiction by this Court. It will not cause grave prejudice to the non-applicants but would also result in an undue enrichment to the applicant contrary to the principles of equity, justice and good conscience. Hence, prayed to reject the application.

8. Heard both the learned Counsel for the parties.

9. The preliminary objection is raised by the non-applicants about the maintainability of the Civil Revision Application. The order is challenged on the ground that there is suppression of material fact and the non-applicants have played fraud on the Court. To challenge the order on this ground, the alternate remedy i.e. review is available to the non-applicants. On perusal of the order, it appears that there is no any jurisdictional error. Though the earlier application was filed, summons were issued to the applicant and *ex parte* order was passed against the applicant, the applicant remain absent before the Court.

10. The learned Counsel for the non-applicant has relied on the judgment of the Hon'ble Apex Court in the matter of *Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav* [Civil Appeal No.163/1963], wherein it is held in paragraph Nos.11 and 12 as under :

“11. The provisions of s.115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under s. 115, it is not competent to the High Court to correct errors of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of s. 115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law

which concerns the jurisdiction of the court which tries the proceedings.

A finding on these plea in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of s. 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under s. 115.

12..... Sometimes, however, no such specific provision is made, and the questions raised in regard to the construction of the provisions of such a statute reach the High Court under its general revisional jurisdiction under s. 115 of the Code. In this class of cases, the revisional jurisdiction of the High Court has to be exercised in accordance with the limits prescribed by the said section. It is true that in order to afford guidance to subordinate courts and to avoid confusion in the administration of the specific law in question, important questions relating to the construction of the operative provisions contained to such an Act must be finally determined by the High Court; but in doing so, the High Court must enquire whether a complaint made against the decision of the subordinate court on the ground that it has misconstrued the relevant provisions of the statute, attracts the provisions of s. 115. Does the alleged misconstruction of the statutory provision have relation to the erroneous assumption of jurisdiction, or the erroneous failure to exercise jurisdiction, or the exercise of jurisdiction illegally or with material irregularity by the subordinate court ? These are the tests laid down by s. 115 of the Code and they have to be borne in mind before the High Court decides to exercise its revisional jurisdiction under it.”

11. This Court has observed that the errors committed by the Subordinate Court in deciding question of law which have relation to, or

are concerned with, questions of jurisdiction of the said Court, and errors of law have no such relation. It is observed by the Hon'ble Apex Court that an attempt to define this position with precision or to deal with it exhaustively may create unnecessary difficulties. It is clear that in actual practice, it would not be difficult to distinguish between cases where errors of law affect, or have relation to the jurisdiction of the Court concerned, and where they do not have such a relation. In *Ratilal Balabhai Nazar Vs. Ranchhodbhai Shankarbhai Patel and Ors.* [MANU/SC/0393/1965] in exercise of jurisdiction under Section 115, it is observed by the Hon'ble Apex Court in paragraph 3 as under :

*3.Prima facie the decision of this Court supports the contention of the appellant; but even so, we are constrained to hold that the High Court was not, in the exercise of its jurisdiction under Section 115, Code of Civil Procedure which was invoked by the appellant, competent to interfere and that the limitations placed upon the powers of the High Court under that section would also circumscribe the power of this Court to interfere under Article 136 of the Constitution. No doubt, by an erroneous construction of the relevant provisions the Principal Judge of the City Civil Court granted relief of possession to the respondent to which he would not have been entitled had the provision been rightly construed. Even so, as observed by this Court in *Abbasbhai v. Gulamnabi*, an erroneous construction placed upon the relevant provision would not furnish a ground for interference under Section 115 of the Code. It may be mentioned that in that case also the question was about the construction of Section 12(3)(b) of this very Act, and an argument similar to the one advanced before us was addressed in it. Rejecting that argument this Court observed:*

"The District Court on an erroneous view of Section 12(3)(b) held that the requirements of that provision were complied with by the defendant, but it also held that having regard to the circumstances the readiness and willingness contemplated by Sub-section (1) was otherwise established. The High Court had, in exercise of its powers

under Section 115, Code of Civil Procedure, no authority to set aside the order merely because it was of the opinion that the judgment of the District Court was assailable on the ground of error of fact or even of law. Jurisdiction to try the suit was conferred upon the Subordinate Judge by Section 28(1)(b) of the Act, and the decree or order passed by the Subordinate Judge was by Section 29(1)(b) subject to appeal to the District Court of the District in which he functioned; but all further appeals were by Sub-section (2) of Section 29 prohibited. The power of the High Court under Section 115, Code of Civil Procedure was not thereby excluded, but the exercise of that power is by the terms of the statute investing it severely restricted."

After referring to the decision of the Privy Council in Balakrishna Udayar v. Vasudeva Aiyar, 44 Ind App 261: AIR 1917 PC 71, and quoting a portion therefrom this Court observed:

"Therefore, if the Trial Court had jurisdiction to decide a question before it and did decide it, whether it decided it rightly or wrongly, the Court had jurisdiction to decide the case and even if it decided the question wrongly, it did not exercise its jurisdiction illegally or with material irregularity."

On behalf of the plaintiff in that case Mr. Chatterjee relying upon the decision in Joy Chand Lal v. Kamalaksha Chaudhury, 76 Ind App 131: had contended that the District Court in declining to pass a decree in ejectment refused to exercise a jurisdiction vested in it by law and, therefore, the case fell within the terms of Clause (b) of Section 115, C. P. C. This contention was negatived by the Court after citing the following passage from the opinion of Sir John Beaumont in that case. The passage runs thus:

"There have been a very large number of decisions of Indian High Courts on Section 115 to many of which their Lordships have referred. Some of such decisions prompt the observation that High Courts have not always appreciated that although error in a decision of a subordinate court does not by itself involve that the subordinate court has acted illegally or with material irregularity so as to justify interference in revision under Sub-section (c), nevertheless, if the erroneous decision results in the Subordinate Court exercising a jurisdiction

not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under Sub-section (a) or Sub-section (b), and Sub-section (c) can be ignored."

This Court then observed that the Privy Council had distinguished between cases in which on a wrong decision the Court assumes jurisdiction which is not vested in it or refuses to exercise jurisdiction which is vested in it by law and those in which in exercise of its jurisdiction the Court arrives at a conclusion erroneous in law or in fact, and that while in the former class of cases exercise of revisional jurisdiction by the High Court is permissible it is not permissible in the latter class of cases."

12. The learned Counsel for the applicant has stated that suppression of the material before the Trial Court resulted in material irregularities, if appeal is not provided to challenge the order, then, revision is maintainable. The applicant has relied on the judgment of the Hon'ble Apex Court in the case of *Union of India and Ors. Vs. Ramesh Gandhi* reported in **(2012) 1 SCC 476**, wherein it is observed in paragraph 27 as under :

"27. If a judgment obtained by playing fraud on the Court is a nullity and is to be treated as non est by every court, superior or inferior, it would be strange logic to hear that an enquiry into the question whether a judgment was secured by playing fraud on the court by not disclosing the necessary facts relevant for the adjudication of the controversy before the court is impermissible. From the above judgments, it is clear that such an examination is permissible. Such a principle is required to be applied with greater emphasis in the realm of public law jurisdiction as the mischief resulting from such fraud has larger dimension affecting the larger public interest."

13. It is revealed from the record that in earlier application, the summons were issued, it was proceeded *ex parte*. The applicant has not

taken any action, then it acts as of waiver. The applicant has not brought it to the notice of the Court. As the review is the remedy available to the applicant and it does not come under the purview of Section 115 of the C.P.C. Hence, the application is rejected.

Rule is discharged.

(MRS. VRUSHALI V. JOSHI, J.)