



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.2081 OF 2024
IN
REVIEW APPLICATION (STAMP) 2548 OF 2024
IN
SECOND APPEAL NO.46 OF 2021

Shashikalabai Janardhan Indapure

.. Applicant

Versus

1. Bhimabai Sampat Jadhav
2. Vinayak Bhavanibuwa Mate
3. Laxman Pratilba Bhade (Since Deceased)
- 3A] Rukhmanbai Laxman Bhade
- 3B] Appasaheb Laxman Bhade
4. Shantabai Baburao Bhosale
5. Aasha Murlidhar Salve
6. Uttam Shripati Bhade (Since deceased)
Through his LR's
- 6A] Laxmibai Uttam Bhade
- 6B] Kum. Meena Uttam Bhade
- 6C] Suresh Uttam Bhade
- 6D] Suryakalabai Uttam Bhade
- 6E] Sandeep Uttam Bhade
- 6F] Hirabai Uttam Bhade
7. Nanabai Sahebrao Gadekar
(Since deceased)
Through her LR's.
- 7A] Suresh Sahebrao Gadekar
- 7B] Jaya Bapu Shejul
- 7C] Pooja Ganesh Gaike
- 7D] Ganesh Sahebrao Gadekar

.. Respondents

...
Mr. A. R. Syed, Advocate for the applicant.
Mr. A. S. Bajaj, Advocate for respondent No.1.
Mr. Shivaji M. Nawale and Associates for respondent Nos.3A and 3B. (Absent).
...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 10 APRIL 2026

PRONOUNCED ON : 04 MAY 2026

ORDER :-

. Heard Learned Advocate Mr. A. R. Syed for the applicant and learned Advocate Mr. A. S. Bajaj for respondent No.1. Learned Advocate for respondent Nos.3A and 3B is absent. Respondent Nos.6A to 6F, 7A to 7D are served.

2. Present application has been filed for condoning the delay of 765 days in filing review application by the original appellant No.2 in Second Appeal No.46 of 2021. Second Appeal No.46 of 2021 was filed to challenge the judgment in Regular Civil Suit No.230 of 1999 passed by learned Joint Civil Judge Junior Division, Gangapur, District Aurangabad dated 24.03.2008. Present applicant was the original defendant No.2 and the suit was filed for declaration, perpetual injunction and possession. It came to be partly decreed. The present applicant along with other defendants filed Regular Civil Appeal No.113 of 2012. Learned District Judge-1, Vaijapur, District Aurangabad dismissed the appeal that was filed by the applicant and other

defendants and then cross objections filed by respondent No.1 therein i.e. original plaintiff was allowed, thereby the entire suit was decreed. Original defendant Nos.1 to 3 then challenged both the decrees in the Second Appeal, however, in the meantime, original defendant Nos.1 and 3 had expired, therefore, their legal heirs were brought on record.

3. Learned Advocate for the applicant submits that the Second Appeal was preferred within limitation. It was listed for admission on 04.02.2021. This Court had granted ad-interim stay to the judgment and decree of the lower courts and the notices were issued. The other defendants were the brothers of the applicant. The applicant had not made any inquiry with them, as the husband of the applicant used to look after the litigation. The applicant being illiterate was kept in dark. Her husband used to say that the proceedings are pending. Unfortunately, the husband of the applicant died on 27.01.2023. Thereafter, when applicant tried to secure the status of the proceedings from the legal heirs of her brother, they had given evasive answers. Somehow, she could contact the lawyer in the month of December 2023 and thereafter, came to know that upon the instructions, learned Advocate then representing the appellant had made a statement that they want to withdraw the appeal. In fact, the applicant had not given any instructions for the withdrawal of the appeal to the concerned lawyer and, therefore, in a way fraud has been played upon the court. Written

instructions were not placed on record and, therefore, the said order dated 28.11.2021 passed by this Court needs to be withdrawn.

4. Notices were issued and respondent No.1/original plaintiff appeared through Advocate. Respondent No.1 has filed affidavit-in-reply and submits that the review application along with application for condonation of delay have been filed with ulterior motive. The applicant wants to take disadvantage of her own illiteracy and the fact of death of her husband. Instructions were given by the appellant to the Advocate for withdrawal of the second appeal, as a result of which the second appeal came to be withdrawn. After the disposal of the second appeal, he made an application seeking permission for sale before the concerned authorities, which was subsequently granted, and thereafter, he sold the land by a registered sale deed dated 11.02.2022. The present application is nothing but an attempt to harass respondent No.1.

5. Both the learned Advocates appearing for the applicant as well as respondent No.1 reiterated the same facts. Learned Advocate for the applicant tried to harp upon the statement made before this Court that there was a settlement between the parties, however, no document in support thereof was produced, and the applicant was not a party to the alleged settlement. When respondent Nos.6 and 7 have played fraud on the Court

by misinforming the Advocate and thereby withdrawing the second appeal and since the present applicant has not been given the fruits of the settlement, such settlement is not binding upon her.

6. Here, in this case, two aspects are required to be noted that the delay is huge i.e. 765 days and to explain the same, the applicant has stated that since her husband was looking after the litigation and she being illiterate, had not paid attention. She was kept informed by her husband that the proceedings are pending. Now, her husband is no more. Therefore, there is no mechanism available to confirm with the said fact. The husband of the applicant expired on 27.01.2023. The Second Appeal stood withdrawn by order dated 18.11.2021. Therefore, at least from 18.11.2021 till 26.01.2023, the husband of the applicant was having knowledge about the withdrawal of the appeal. When implied authority had been given by the applicant to her husband to look after the litigation, the applicant cannot now be permitted to take advantage of the situation arising from the death of her husband, unless there is concrete evidence to support her case. Every litigant is expected to be diligent and should update his or her information regarding the pending litigation. If we peruse the order dated 18.11.2021, it can be seen that learned Advocate appearing for the appellant had made statement that his clients i.e. the appellants had informed him that they have settled the matter out of Court and, therefore, they sought the withdrawal of the

appeal. Now, which kind of settlement was agreed, that too out of Court, could not have been asked by this Court, provided the parties were satisfied with the out of Court settlement. Certainly, when a party appears before the Court, it is expected that all the applications should be brought on record and there should be a seal of the Court to the said settlement. But it depends upon the parties. If they are satisfied with an out of Court settlement, the same can be said to be permissible i.e. in view of the oral contract between them. The Court cannot insist upon submitting of the settlement in writing before it. This Court with the limited scope in the application as well as in the review petition cannot go into the aspect as to whether the act on the part of the other appellants while instructing the Advocate regarding settlement and withdrawal amounts to fraud or not. The review powers of this Court are in a way limited and cannot go beyond the facts those were available on the face of record with it.

7. I would like to take into consideration the parameters which are required to be considered for a Review Petition. For that purpose, I would like to rely on the following decisions :-

7.1 In **Vinay Sharma and another vs. State (NCT of Delhi) and others**, [(2018) 8 SCC 186], it has been observed that :-

“Power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a

subordinate Court. A repetition of old and overruled argument is not enough to reopen concluded adjudications.”

7.2 Further, in **Thungabhadra Industries Ltd. vs. Government of A.P [AIR 1964 SC 1372]** (Three Judges Bench) it has been observed that -

“A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point out to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out.”

7.3 Further, in **Parison Devi vs. Sumitri Devi, [(1997) 8 SCC 715]** it has been observed that -

“An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. A review petition, it must be remembered has a limited purpose and cannot be allowed to be ‘an appeal in disguise.’”

7.4 Same ratio has been reiterated in **Vikram Singh @ Vicky Walia and another vs. State of Punjab and another [(2017) 8 SCC 518]**, wherein it has been observed that “Review cannot be made on those grounds which were already urged during appeal.”

7.5 Further, in **State of West Bengal and others vs. Kamal Sengupta and another [(2008) 8 SCC 612]** it has been held thus -

"21. At this stage, it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.

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 factor law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

7.6 Further, reliance can be placed on **Inderchand Jain (dead) through L.Rs. vs. Motilal (dead) through L.Rs.** [(2009) 14 SCC 663], wherein it has been reiterated that "Review is not an appeal in disguise. Review Court cannot sit in appeal over its own order and re-hearing of the matter is impermissible in law."

7.7 Reliance was then placed on **Board of Control for Cricket in India vs. Netaji Cricket Club** [(2005) 4 SCC 741]. Note of the earlier decisions was

taken by the Hon'ble Supreme Court and it has been observed that "When there is new discovery of fact, then there is no question of applying the review powers, unless it is shown that certain facts were absolutely not within the knowledge of the appellant."

7.8 In **Kamlesh Verma vs. Mayawati and others**, [(2013) 8 SCC 320] it has been held by Hon'ble Supreme Court that "change of Advocate and then re-opening of the same point by the new Advocate is impermissible in review. In this case principles have been summarized relating to review jurisdiction. One of the grounds is – ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

8. Thus, taking into consideration the legal position as well as the factual situation that the applicant has failed to give reasonable ground which prevented her from approaching this Court for review i.e. failed to explain the delay of 765 days, the application stands **dismissed**.

[SMT. VIBHA KANKANWADI]
JUDGE

scm