



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

MISC. CIVIL APPLICATION NO. 551 OF 2024
IN
CIVIL APPLICATION (S) NO. 1208 OF 2023
IN
SECOND APPEAL NO. 396 OF 2022

Hemlata Moreshwar Dhoble ...Applicant

Versus

Dinanath Punaji Dobarkar and others ...Respondent

.....
Mr. R.M. Sharma, advocate for the applicant
Mr. Sarang S. Malode, advocate for respondent Nos. 1 to 3
.....

CORAM : SANJAY A. DESHMUKH, J.
DATE OF RESERVING THE : 16.04.2026
ORDER
DATE OF PRONOUNCING : 06.05.2026
ORDER

ORDER :-

1. This review application is preferred by the appellant in second appeal No. 396 of 2022 in which civil application No. 1208 of 2023 was moved for appointment of Court Commissioner. This court, by an order dated 27.6.2024 rejected the said application with costs of Rs.1000/- to be paid to respondent Nos.1 to 3. The review of the said order is prayed.

2. The background facts are that Regular Civil Suit No. 1743 of

2005 was filed against this applicant by the respondents for perpetual injunction etc. which was dismissed. The Regular Civil Appeal No.103 of 2015 was preferred before the District Judge, Nagpur. The appeal was allowed and the suit was decreed. The applicant filed second appeal No. 396 of 2022. In the said appeal, civil application No.1208 of 2023 was preferred for appointment of Court Commissioner. Both the sides were heard and the civil application was rejected.

3. Learned advocate for the applicant pointed out that in the impugned order this Court has erroneously observed in para 7 that “the issue is limited as to whether compound wall of plaintiff’s plot can be used for raising pole for electricity connection?”

4. Learned advocate for the applicants further submitted that said factual erroneous conclusion seriously affected the applicant’s right to get appointed the Court Commissioner. It is a mistake of fact and it is a ground for review and therefore, there is scope for review of the impugned order. He submitted to set aside the said order by allowing the review application.

5. Learned advocate for the respondents strongly objected the application and submitted that in the facts and circumstances of the case as per Section 114 r/w. Order XLVII of the Civil Procedure

Code, 1908, there is no scope for review of the impugned order.

6. Learned Advocate for the respondent submitted that this Court held that when it is not in dispute as to the boundary and the encroachment over the suit property, the commission for measurement of plots of both parties cannot be appointed. The application was also rejected on the ground of delay caused for filing the application, which was moved first time in second appeal. He submitted that said mistake happened because of some observation in the Judgments of Trial Court, First Appellate Court and cross-objection filed by present applicant.

7. The learned Advocate pointed out those facts which are as follows:-

I) It is observed in paragraphs 1 and 40 in the judgment of trial court in Regular Civil Suit No. 1743 of 2005 as under:

1) The plaintiffs have claimed the relief of Mandatory Injunction directing defendant no.1 to remove the electric meter and delete her name appearing on iron gate and front side door of the suit property with formal declaration that defendant no.1 has no concern with the suit plot.

40) The plaintiff alleged that defendant no.1 has obtained the electricity connection over the disputed

portion behind his back and without his knowledge.

II) The contention of the defendant in paragraph No.1 in cross objection of first appeal, reads as under:-

“1. That the appellants/original plaintiffs by filing suit before the Trial Court sought the relief of mandatory injunction directing the defendant no.1 to remove electric meter and delete her name appearing on Iron gate fronts side door of the suit property. That the original defendant no.1/respondent no.2 has no concern with the suit property.”

III) In the judgment of First Appellate Court in Regular Civil Appeal No.103 fo 2015, in paragraph Nos.3, 28 and 34, it is observed as under:

3) The defendant No.1 taking advantage of absence of plaintiffs in Nagpur misguided the MSEB and prepared false and fraudulent documents. The defendant No.1 took electricity connection on the said plot by using her father-in-laws political influence.

28) The defendant No.1 has examined DW2 Ashok the witness whose father Narayanrao is owner of plot No.47.

The witness stated that he has seen the defendant No.1 in plot No.33 doing construction of compound wall by contractor Shrikant Ghate.

34) The plaintiff has proved that the defendant No.1 has unauthorizedly took electricity connection in the suit plot and shown the name board.

8. The learned Advocate for respondent submitted that because of above facts pointed out by him in the matter before this Court that mistake might have happened. It is not material error. He prayed to reject the application as this Court has not rejected the said application only because of that mistaken observation on fact.

9. Perused the the impugned order. The mistake as pointed out by the learned Advocate for the applicant is occurred in the impugned order. In para 9 of the impugned order, this Court has held that an application for appointment of Court Commissioner was not moved before the trial court or the first appellate court and it is filed in the year 2023, for the first time in the second appeal. This court has also observed that "when there is no dispute as to the compound wall raised or encroachment made over the suit property, the appointment of the Court Commissioner for measurement of the plot of both parties cannot be allowed". These two findings are

drawn on the basis of facts of the case of both side on record and not on the basis of wrong observation as pointed out by the applicants.

10. As far as mistakes that happen on the part of the Court are concerned, the Hon'ble Supreme Court in the case of ***D. Purushottam Reddy and another Vs. K. Sateesh, reported in 2008 SC 505***, held that the party shall not suffer for the mistake of the Court. (actus curiae neminem gravabit – No person shall be prejudiced by an act of court). Further in the case of ***Odisha Forest Development Corporation Limited Vs. Anupam Traders and Anr. reported in (2020) 15 SCC 146***, Hon'ble Supreme Court held that the Court will have to bear in mind the maxim actus curiae neminem gravabit, namely i.e. no party should suffer due to the act of court.

11. The Hon'ble Supreme Court in the case of ***K.P. Tiwari vs. State of Madhya Pradesh, AIR 1994 SC 1031***, held that it is well said that a judge who has not committed an error is yet to be born. And that applies to judges at all levels from the lowest to the highest . Sometimes, the difference in views of the higher and the lower courts is purely a result of a difference in approach and perception. The Hon'ble Supreme Court also in the case of ***Braj Kishore Thakur vs. Union of India and others; AIR 1997 SC 1157***, has observed that it is well to remember the words of a jurist that "a Judge who has not committed any error is yet to be born."

12. It is also notable that in the case of ***Brown V. Allen, Warden, 344 U.S. 443 (1953)***, in which the Honourable Supreme Court of United States of America, observed that, “We are not final because we are infallible, but we are infallible only because we are final.

13. Only because there is mistake in initial part of para 7 of the impugned order as to facts, rest of the finding discussed above with separate reasons and conclusions of this court cannot be washed out and for that respondent shall not suffer as held in the case of ***Odisha Forest Development Corporation Limited Vs. Anupam Traders and Anr. (supra)*** that party should not suffer for act of Court.

14. If on this ground of mistake, the impugned order is set aside, it will cause serious effect on the respondent's right and injustice will cause to him. But if this application is not allowed, applicant will not suffer any loss, as the application is not rejected only on that mistake/wrong observation in the impugned order alone. Only because of mistake of court as to facts and it is not material error, interference in the impugned order is not warranted.

15. The said application has been decided by this Court on merit on other factual aspects i.e. delay caused for filing application and

that there is no any dispute as to the encroachment on boundary. Only because of the mistake of court erroneous observations as to compound wall and electric connection in the impugned order, its disadvantage cannot be taken unless it is established that it was decisive/basic factor of the impugned order and that seriously affected legal rights of the applicant. No any legal right of the applicant is affected. No prejudice is caused to the applicants' right. Therefore, respondent shall not suffer by injustice only because of mistake of the Court.

16. Considering the peculiar set of facts of this case that only because there is mistake of Court as to fact, there is no scope for interference in the impugned order under the caption of review. The application deserves to be rejected. The application is rejected with no order as to costs.

(SANJAY A. DESHMUKH, J.)

rlj/