



CNRNO-MHSCA20007472023

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT- 1

IN

REVIEW APPLICATION NO.14 OF 2023

IN

INTERIM APPLICATION EXHIBIT-17 OF 2023

IN

RAE & R SUIT NO.542 OF 2023

Monica Vasumal Melwani

...Plaintiff

Versus

1.M/s W. J. Baker & Ors.

...Defendants

Appearance :

Sood Prem, Ld Advocate for the plaintiff.

Coram : P. V. Kulkarni

Judge, C. R. No. 17

Date : 12.01.2024

ORDER :

This is an application for review / modification of order dt.15.07.2023.

Brief facts of the plaintiff's case in nutshell can be stated as under: -

2. The applicant is the plaintiff in the suit bearing RAE & R No.542 of 2023 for eviction on the various grounds more particularly mentioned in the plaint. One application for injunction at Exh-9 was also filed in the said suit. The said application was granted on 06.05.2023 directing the parties to maintain status quo till next date i.e. 17.06.2023. On 12.05.2023, it was observed that, during the

pendency of the status quo order, the defendants have committed breach of the said order secretly removing the main door of the suit shop and taking it away and doing heavy repair works to facilitate the change of user in favour of the third party.

3. It is further stated that on 22.05.2023, the plaintiff filed one application under order XXXIX Rule 2-A r/w section 151 of Code of Civil Procedure, 1908 to detain the defendants No.2 and 3 in civil prison as well as to direct the defendants to put the original door back in its original position as well as for appointment of court receiver. The said application came to be disposed off in view of the observations of the Hon'ble Bombay High Court in the case of Rampyari Bai, more particularly as mentioned in the said order. Thus, the application was decided only in respect of the breach of the order. The remaining prayers about the appointment of the receiver and for restoring the door were not considered nor decided. Hence, prayed to allow the application.

4. As per the reply filed by non applicant at Exh-14, it is contended that, the contentions in the application are denied. It is abuse of process. The plaintiff has failed to set out any ground to allow the application. The plaintiff is seeking to modify/ review the order dt.15.07.2023. The plaintiff has failed to show the grounds of doing so. The plaintiff has accepted the order dt.15.07.2023 and filed separate application being Marji Application No.221/2023 wherein the plaintiff has once again sought prayers for appointment of court receiver and for restoring the door. The plaintiff cannot be permitted to file such separate proceeding. It is prayed to reject the application.

5. Considering the contentions of both the parties, following

points arise for my determination. I have recorded my findings thereon for the reasons mentioned as under :

Sr. No.	<u>Points</u>	<u>Findings</u>
1.	Whether there is any apparent error in the order dt.15.07.2023?	No.
2.	Whether the application can be allowed?	No.
3.	What order ?	As per final order.

REASONS

AS TO POINT NOS:1 & 2:-

6. Needless to mentioned that the provision regarding the power of the court to review the order / judgment is provided under section 114 r/w Order XLVIII of the Code of Civil Procedure, 1908. It provides that any person considering himself aggrieved by a decree or order from which an appeal is allowed and no appeal is preferred or where by decree or order from which no appeal is allowed or by a decision or a reference from a Court of Small Causes, and who from the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or on account of some mistake or error apparent on the face on record or for any other sufficient reason, desires to obtain a review, may apply for such review of judgment or order. In case on hand, the plaintiff has to show that there is some mistake or error apparent on the face of the record.

7. It is the matter on record that, the plaintiff has filed one suit bearing RAE & R suit No. 542 of 2023 wherein he has filed one application for breach of injunction order and other reliefs including the appointment of court receiver and for restoring the door. The said application was admittedly filed stating that the status quo order issued by this court was not obeyed. By the order, the said application came to be disposed off with the observation that the said application is not tenable in the suit as it requires to file separate proceeding. Accordingly, the said application came to be disposed off. It is the contentions of the plaintiff that, the said application was disposed off without considering the prayer for appointment of court receiver and for restoring the door.

8. The ld. Advocate for the defendant has raised the objection that, the plaintiff has accepted the said order and filed the another separate proceeding which is registered as Marji Application No.221 of 2023 wherein the plaintiff has once again sought those prayers of appointment of court receiver and for restoring the door. Thus, as it is not objected by filing rejoinder, it can be accepted to be true. In that light, when already the plaintiff has, in compliance of the observation of this court, filed the separate proceeding that too with the prayers to appoint court receiver and for restoring the doors alongwith the prayer for action under order XXXIX Rule 2-A of the Code of Civil Procedure, 1908, this application cannot be allowed.

9 It can be noted that, the plaintiff has filed the copy of the order below Exh-17 at Exh-2 in the present proceeding. Similarly, the copy of the said application is filed on record. If we considered the contentions in the same application, it can be revealed that, the

plaintiff had come up with the case that, the defendants have committed disobedience of the status quo order. It is contended that, the defendants have committed the said breach by removing the door of original Burma wood having brass metal fittings and put a cheap plastic door. Similarly, it is contended that the appointment of court receiver is necessary considering the apprehension that the defendants might repeat such mischief. Thus, all these prayers and contentions were regarding the breach of the status quo order and consequential reliefs. Plaintiff has already claimed those reliefs in the said proceeding. Moreover, perusal of the CIS record of RAE & R Suit No. 542 of 2023, it is found that already the plaintiff had filed one application at Exhibit-38 for appointment of court receiver which came to be already rejected on 02.11.2023. Thus, in that light as well, this review application cannot be allowed.

10. Considering all these circumstances, it is clear that, already the application filed by the plaintiff for appointment of court commissioner at Exh-38 in RAE & R suit no. 542 of 2023 is rejected. Similarly, the plaintiff has also claimed this relief in another proceeding which is filed for breach of status quo order. No apparent error appears to allow the review of the order. Hence, I answer points No.1 and 2 in negative and I pass the following order:-

ORDER

1. The application is rejected.
2. Proceeding is closed.

Mumbai
Dt.12.01.2024

(P. V. Kulkarni)
Judge, C.R.17