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CNR NO. MHSCA20008162024

Presented on : 19-04-2024

Registered on : 23-04-2024

Decided on : 16-01-2025

Duration : Years Months Days
00 08 28

IN THE COURT OF SMALL CAUSES AT MUMBAI

REVIEW APPLICATION NO.1 OF 2024

IN

LE & C SUIT NO.785/823 OF 1986

Messrs Kilachand Devchand and Co. Pvt. Ltd.

Being a Private Limited Company

Incorporated under the Companies Act, 1913

Having its registered office at 7 -Jamshedji Tata

Road, Oriental House, Churchgate,

Bombay 400 020.

Authorised Person -Mr. Satyen Mehta

..Applicant/

Org. Defendant

Versus

The Board of Mumbai Port Authority

Being a Port Authority incorporated under

Major Port Authorities Act, 2021,

having its registered office at "Vijay Deep",

Shoorji Vallabhdas Marg, Fort,

Bombay 400 038.

..Respondent/

Org. Plaintiff

Raval-Shah & Co. Advocate for Applicant.

Bangale & Associates, Advocate for Defendants.

Coram :- R. U. Shaikh, Judge

Court Room No.1

Date :- 16th January, 2025

ORAL JUDGMENT

1. This Review Application has been filed under Section 114, read with Order XLVII, Rule 1, of the Code of Civil Procedure, 1908 (CPC), seeking a partial recall and modification of Clauses (2) and (3) of the judgment delivered in L. E. & C suit No. 785/823 of 1986 with request to recall lapsed monies for adjustment against decretal amount.

Facts giving rise to the present application:-

2. The respondent/plaintiff is a statutory corporation established under the Major Port Authorities Act, 2021, and the legal successor to the Board of Trustees of the Port of Bombay. The respondent's predecessor-in-title had filed LE & C Suit No. 785/823 of 1986, seeking, among other reliefs, a decree for the sum of ₹62,616.42, along with interest of ₹57,338.87 at 15% per annum from the date of filing the suit until payment or realization.

3. The respondent's predecessor-in-title also attached a statement of particulars of the claim to the plaint. Upon receiving the summons, the applicant/defendant filed a written statement opposing the suit. During the pendency of the suit, on January 30, 1992, the respondent's predecessor-in-title filed Interlocutory Notice No. 59 of 1992, following which the Court directed the applicant/defendant to deposit ₹2,92,308/- as arrears and compensation for the period from September 1, 1986, to December 31, 1991. Additionally, the Court directed the deposit of ₹42,000/- as compensation for the period from January 1, 1992, to February 28, 1993, and ₹3,000/- as monthly accruing compensation.

4. The applicant/defendant challenged this order in the Hon'ble High Court through Writ Petition No. 1508 of 1993. The Hon'ble High Court stayed paragraphs (2) and (3) of the Trial Court's

order and directed the applicant/defendant to deposit ₹1,50,000/- by the end of May 1993. Complying with the High Court's order, the applicant/defendant deposited ₹1,50,000/- towards arrears of compensation from September 1, 1986, onwards, ₹12,000/- for arrears of compensation from January 1, 1992, to February 28, 1993, and ₹42,000/- for arrears from March 1993 to June 1993, totalling ₹2,04,000/-.

5. However, during the pendency of the suit, the respondent's predecessor-in-title did not take steps to withdraw the deposited amount, leading to its lapse. On March 14, 2001, during the pendency of the suit, the applicant/defendant handed over possession of the suit premises to the respondent's predecessor-in-title.

6. The suit was partially allowed by this Court through a judgment and decree dated May 6, 2023. The applicant/defendant was directed to pay ₹62,616.42 as arrears of rent along with ₹57,338.87 in interest within two months from the date of the order.

7. The applicant/defendant claims there was an error in the calculation. The particulars annexed to the plaint show that ₹62,616.42 included ₹5,277.55 in interest on the principal sum of ₹57,338.87. This created ambiguity in the pleadings. The respondent's predecessor-in-title sought recovery of ₹62,616.42, inclusive of ₹5,277.55 in interest calculated for a specific period on the principal sum. However, this ambiguity in the pleadings misled the Court during judgment, resulting in the inclusion of this amount in the decree. The applicant/defendant argues that the Court erred in considering the ambiguous amount mentioned in the prayer.

8. Furthermore, the applicant/defendant contends that they had deposited the sums as directed by the Hon'ble High Court, which the respondent's predecessor-in-title was allowed to withdraw.

However, the respondent failed to withdraw the amount, causing it to lapse. The applicant/defendant now requests that the lapsed amount be recovered and adjusted against the respondent's total claim. This request forms the basis of the current Review Application.

9. In reply (Exhibit 9), the respondent/plaintiff has opposed the application. They assert that the suit was filed to recover possession of the premises and revise the monthly rent. After terminating the tenancy through their advocate notice, the suit was decreed, granting them ₹62,616.42 as arrears, along with interest, based on the particulars of the claim. The respondent denies the alleged calculation error and has requested the rejection of the Review Application.

10. I have heard both parties at length. Furthermore, the applicant/defendant has submitted written arguments, which are on record as Exhibit 10.

11. The following points arise for my determination, and I have recorded my findings as follows-

<u>S. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Is there an error in the judgment of LE & C Suit No. 785/823 of 1986?	No
2.	Does the judgment and decree of LE & C Suit No. 785/823 of 1986 require recall and modification as claimed?	No
3.	What order?	The Application is dismissed.

REASONS

AS TO POINT NO.1 TO 3 :-

12. For the applicant/defendant to succeed, they must demonstrate either an error apparent on the face of the record, the

discovery of new and important evidence that was unavailable during the original suit, or another sufficient reason to prevent a miscarriage of justice. According to the applicant/defendant, there was a mistake in the pleadings by the respondent's predecessor-in-title. The applicant/defendant relied on the prayer clause and the particulars of the claim attached to the plaint, as shown in Exhibit B of the referenced suit.

13. The applicant/defendant argued that the actual claim of the plaintiff was ₹62,616.42, comprising a principal sum of ₹57,338.87 and interest of ₹5,277.55. However, a mistake in the pleadings and prayer made it appear as though the plaintiff sought ₹62,616.42 along with additional interest of ₹57,338.87 at 15% per annum from the filing of the suit until realization. Upon verification of the plaint, particularly the prayer clause and annexure Exhibit B, this submission appears to have merit.

14. However, under Order XLVII, Rule 1, the applicant/defendant must show an error on the face of the judgment or order, not merely an error in the pleadings. The applicant/defendant claimed that the Court relied on the respondent/plaintiff's incorrect calculations, leading to an error in the judgment. However, they could not point to any error apparent in the judgment itself.

15. The Court, after considering the merits of the claim, concluded that the respondent/plaintiff had proved entitlement to ₹62,616.42 as arrears of rent, along with interest of ₹57,338.87 and additional interest at 15% per annum from the filing of the suit until 2001. If the applicant/defendant believed the calculations were incorrect, it was their responsibility to demonstrate this to the Court. Failing to do so, their argument hinges on inconsistencies in the plaintiff's pleadings rather than an error in the judgment.

16. A review application cannot serve as an appellate forum to re-adjudicate claims. The judgment was based on the prayer clause, and no error is apparent on the face of the record. The applicant/defendant's reliance on inconsistencies in the plaintiff's pleadings does not warrant a review of the judgment in LE & C Suit No. 785/823 of 1986. Therefore, the first prayer for partial recall and modification of the judgment is not justified.

17. Regarding the request to recall the lapsed amount and adjust it toward the plaintiff's claim, this aspect does not fall within the scope of a review application. Any such adjustment should be addressed during the execution of the decree, not in a review proceeding. The scope of a review application is limited, and the Court cannot consider this request.

18. Consequently, I find no merit in this application. Points Nos. 1 and 2 are answered in the negative, and regarding Point No. 3, the application is dismissed with the following order:

ORDER

The Review Application is dismissed.

(Dictated and pronounced in open Court)

Mumbai
Date : 16/01/2025

[R. U. Shaikh]
Judge, C. R. No.1