

R.C.S.No. 112/2004
Satyanaraya..Vrs. Ramesh+1
CNRNO.MHAK09-000092-2004

Order Below Exh.55
(Passed on 04.10.2018)

Read application. Perused the record. Heard learned advocate Shri. D. B. Marval appearing for the plaintiff.

2] The said application is filed by the plaintiff for review of an order dt. 11.10.2017 passed below Exh. 34. An application Exh. 34 was moved by plaintiff for impounding of document i.e. leave and licence agreement entered between the plaintiff and defendants in respect of the suit premises. But that application came to be rejected.

3] The plaintiff instituted this suit for recovery of possession and arrears of licence fee. The defendants are the tenants of the plaintiff. Despite of sufficient opportunity, the defendants did not file their say to this application. Therefore, this application is proceeded without their say. Learned advocate Shri. D. M. Marval submitted that an order dt. 11.10.2017 passed below Exh. 34 needs to be review as there is an apparent error on the face of the record. While rejecting the application for impounding of document the Court did not interpret the provisions of the Maharashtra Rent Control Act and the Indian Stamp Act. Observation in respect of non disclosure of stamp required is also error on record. Hence, he prayed to review of an order passed below Exh. 34.

4] On perusal of record it appears that the plaintiff moved an application Exh. 34 for impounding of document i.e. leave and licence

agreement entered into the plaintiff and defendants, which came to be rejected. The ld. Advocate Shri. D. M. Marval submitted the the Court did not interpret the provision of law. I have gon through the order passed by my learned predecessor. In para no. 5 & 6 of the said order, my learned predecessor considered the provisions of the Maharashtra Rent Control Act and Bombay Stamp Act and passed detailed order.

5] So far as, the application for review is concerned, as per the Order 47 of the Code of Civil Procedure the review of an order can be entertained on the following grounds.

- 1) Discovery of new facts or evidence, or
- 2) Mistake or error apparent on the face of the record, or
- 3) Any other sufficient reason.

6] As such the plaintiff has to convince the Court that there are apparent error on the face of the record which can be seen without any elaborate argument. But, in the matter the plaintiff could not point out that there is an apparent error on the face of the record. On going through the application of the plaintiff, it appears that the plaintiff trying to say that the view taken by my ld. Predecessor is wrong.

7] The scope of an application for review is much more restricted. The Hon'ble Supreme Court in "**Lily Thoms..Vrs. Union of India, AIR 2000, SC 1650**", held that an power of review can only be exercised for correction of mistake and not substitute a view and that the power of review could only be exercised within limits of the statute dealing with the exercise of such power. The review cannot be treated like an appeal in disguise. The mere, possibility of two views on the subject is not a ground for review. In the matter the plaintiff submitted that there is a error apparent on the face of the record, but the learned

advocate Shri. D. M. Marval cannot point out such error which is apparent on the face of the record. Therefore, the application filed by the plaintiff devoid merits.

8] The plaintiff in the application contended that the order below Exh. 34 passed on 11.10.2017. The application is filed on 17.11.2017. As per the provisions of Article 124 of the Limitation Act an application for review shall be filed within thirty days from the date of order. As such the plaintiff ought to have moved this application on or before 11.11.2017. The plaintiff contended in the application that there was Diwali vacation from 14.10.2017 to 23.10.2017. Thus the present application is filed within thirty days from passing of the order. In the Limitation Act, no where it is stated that if during the continuance of period there are holiday, said period can be condoned. As per the section 4 of the Limitation Act where the prescribe period of limitation expires on a day when the Court is close, the application may be made on the date when the Court reopens. But if the Court is closed during the continuation of prescribe period, the said period cannot be excluded. Hence, it appears that the application of the plaintiff is not within limitation. On that count also the application of the plaintiff deserves to be rejected. Hence, I pass following order.

ORDER

1. The application Exh. 55 is rejected.
2. Costs in cause.

Date. 04.10.2018

(U. B. Pethe)
Jt. Civil Judge (J.D.)
Murtizapur.

CERTIFICATE

I affirm that the contents of this file are same word for word as per original order -

Name of Steno : Sau. S. S. Bhide

Name of Court : Shri. U.B.Pethe, Jt.CJJD. & JMFC,(Court No. 2), Murtizapur.

Date : 04.10.2018

Signed by P.O. on : 04.10.2018

Uploaded on : 05.10.2018