

(Exh.60)

1

Special Civil Suit No.15/2011
CNR NO.:MHKO07000159-2011

MHKO070001592011



Sunil Ghisulal Bardiya
V/s.
Baraktulla Fujlulla Irani

ORDER PASSED BELOW EXH.60

1. The plaintiff has taken out present application under Order 47 Rule 1 r.w. Section 114 of the Code of Civil Procedure to review the order passed by this Court dated 10/01/2022 below Exhs. 55 and 56 respectively.
2. According to the plaintiff, the order, granting application Exh.55 and refusing the prayer in application at Exh.56 is not in accordance with law. It is without considering the provisions of Order 6 Rule 16 and Order 8 Rule 1 of C.P.C. It is passed by court without considering the consequential amendment in the Code of Civil Procedure taken place after 01/07/2002.
3. According to the plaintiff, the defendant No.1's application for condonation of delay in filing written statement at Exh.17 was rejected by this Court in the year 2011. The defendant

No.1 should have challenged said order before Hon'ble Bombay High Court, however, filed the application at Exh.56 as a right. According to the plaintiff, it was not tenable as per law. Thus, in spite of above legal position this Court has erroneously interpreted case law, cited by the defendant No.1 and without any right has used its discretion and passed the order below Exhs.55 and 56 respectively.

4. Thus by merely granting cost to the plaintiff by this Court while passing said order, the plaintiff can not be compensated. Thus, the orders on Exhs. 55 and 56 are without detail discussion and abuse of process of the Court, so they be reviewed and by recalling order below Exh.55, the application Exh.56 be allowed.

5. The defendant No.1 opposed the application by filing detail reply vide Exh.62. According to him all the objections raised by the plaintiff in his review application are mentioned at first time. Those objections were not raised by him at the time of decision of Exhs. 55 and 56 respectively. Thus, the plaintiff without justifiable reasons can not seek relief claimed by him by instant application. Hence, the application is sought to be rejected by the defendant No.1.

6. Heard both sides. Gone through record as well document filed by both sides. Considering rival contentions of both parties,

following points arise for my determination which I have recorded my findings thereon along with detail reasons to follow.

Sr.No	Points	Findings
1.	Whether the orders below Exhs. 55 and 56 passed by this Court dated 10/01/2022 are required to be reviewed ?	... In Negative.
2.	What order?	As per final order.

REASONS

7. The Section 114 of the Code of Civil Procedure provides review, which reads as under:-

Section 114 - Review

Subject as aforesaid, any person considering himself aggrieved,—

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.*
- (b) by a decree or order from which no appeal is allowed by this Code, or*
- (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.*

8. Order 47 of the Code of Civil Procedure deals with procedure for review. The combine reading of above provisions makes it clear that, such application for review can be filed where (a) a decree or order is expellable as provided by law, but no such appeal has been preferred. In present case admittedly no appeal is

filed by plaintiff and application is filed within limitation of 30 days from the date of order below Exh. 55, 56, So it is well within limitation as per Article 124 of the Indian Limitation Act, 1963. Now let us consider whether these orders are having valid grounds for review.

9. After combine reading of Section 114 and Order 47 Rule 1 of the Code of Civil Procedure, in my opinion, the scope of review is very limited. After considering the facts on record the said order is passed. The suit is for specific performance of contract. The written statement of the defendant No.1 was taken on record and he was permitted to file his written statement to the amended plaint on the ground that no prejudice will be caused to the plaintiff, if it will be taken on record, although his previous written statement was not taken on record.

10. The said order is passed by this Court in order to decide the suit on the merits and with intent to avoid multiplicity of proceedings. This Court has considered all the legal aspects and has taken care of legal rights of the plaintiff as well the defendant No.1. Considering the real contravenes existing between them.

11. The various judicial pronouncements make the following grounds as acceptable grounds for review of order and judgments

such as (1) Discovery of fresh evidence (2) any other sufficient cause (3) order or mistake appearing on face of record, occurring in Rule 1 of Order 47 of Code of Civil Procedure.

12. In our case it is contention of plaintiff that alleged order is erroneous on face of record so is required to be reviewed. In case of T.C. Basappa V/s. Nagappa, reported in AIR 1954, SC 440, Hon'ble Apex court held that, such an error should be a patent error and not a mere writing decision. An error which is not self-evident and has to be detected by process of reasoning, can hardly said to an error apparent on face of record.

13. In our case, the order passed by court is on merits, so can not be held as erroneous on face of record as it is based on principles that substantive law will prevail over procedural law when parties valuable substantive rights are in question before court. Thus, considering this aspect, the order at Exh. 56 is passed by this court. It is principle of law that the procedure is hand maid of justice. The procedural law is incorporated to give substantive justice to the parties. Their claims can not be thrown away due to mere irregularities or some delay on their part in agitating their rights before the Court.

14. The procedure is always subservient and can never extinguish the parties substantive rights which they may received

(Exh.60)

6

Special Civil Suit No.15/2011
CNR NO.:MHKO07000159-2011

from the Court by litigating before it on the merits. This court has already awarded appropriate cost to the plaintiff for delay caused by defendant No.1.

15. Considering all above aspects, this Court has passed order below Exhs. 55 and 56 respectively and taken on record written statement of defendant No.1, which is in accordance with law. Thus, in my opinion, the plaintiff is not entitled for relief sought. Accordingly, I answer the **point No.1 in negative** and in order to answer point No. 2, proceed to pass following order:-

O R D E R

Application Exh.60 is rejected with cost.

Date : 18/04/2023.

(B.A. Gaikwad)
Civil Judge Senior Division,
Jaysingpur.