


MHPU240003652019 	R.C.S. 35/2019 Dattatray Chandu Somwanshi vs. Sudam Raghunath Anandrao
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Order below Exh. 32

This is an application filed by the defendants for the review of the order passed below Exh.16 dated 05/03/2021.

2. Heard both sides. Considered their submissions.

3. The learned advocate for the defendants filed his written notes of arguments at Exh. 35. He submitted that the suit is filed for specific performance of contract and permanent injunction. The defendants appeared before court on 19/07/2019 and filed the application for rejection of plaint under Order VII Rule 11 at Exh. 16 as the suit is not within limitation and there was no cause of action for the suit. On 05/03/2021 matter is kept for argument on Order VII Rule 11 application at Exh. 16 and which is mentioned in the rojnama. Inadvertently Hon'ble court has passed an order on said application without hearing the argument. The defendants want to explain the facts and circumstances of the suit and file some citations regarding the application filed under Order VII Rule 11 at Exh. 16. It is required to be

argued on said application. He further submitted that it is a prima facie technical mistake and which is proved by evidence.

4. If there is prima facie mistake or error then the review application is maintainable. To support this contention he filed the citation.

In the case of *S. Murali Sundaram vs Jothibai Kannan (CIVIL APPEAL NOS. 1167-1170 OF 2023)* the Hon'ble Supreme Court of India held that “ It is observed that a rehearing of the matter is impermissible in law. It is further observed that a review is not appeal in disguise. It is observed that power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed that it is wholly unjustified and exhibits a tendency to rewrite a judgment by which the controversy has been finally decided. After considering catena of decisions on exercise of review powers and principles relating to exercise of review jurisdiction under Order XLVII Rule 1 CPC this Court had summed upon as under:

i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 CPC.

(ii) Power of review may be exercised when some mistake or error apparent on the face of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any longdrawn process of reasoning on the points where there may conceivably be two opinions.

(iii) Power of review may not be exercised on the ground that the decision was erroneous on merits.

(iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

(v) An application for review may be necessitated by way of invoking the doctrine actus curiae neminem gravabit.

5. Therefore he submitted that this application deserves to be allowed as per Section 114 of Civil Procedure Code 1908. Hence he prayed to allow the application.

6. The plaintiff filed his say strongly opposed the application. The learned advocate for plaintiff submitted that the present application is not true and correct. Both plaintiff and defendant argued on Exh. 16. After hearing both parties and on perusal of record Hon'ble court has

decided the application on merit. The defendant has filed this review application instead of filing an appeal or revision or writ. The Hon'ble court can not change its order by itself. Now the Hon'ble court becomes functus officio. To file a review application as per Order XLVII Rule 1 there should be a discovery of new or important matter and mistake or error at the face. Hence he prayed to reject the application.

7. Perused the application, say, citation and record.

8. I have considered the rival submissions. I have also perused the record and proceedings. The roznama clearly indicates that both parties were present on the day when order on Exh. 16 was passed. Perused order below Exh. 16 passed by my learned predecessor, the order itself shows that arguments advanced by both sides were considered. Mere 'argument heard' not mentioned in the rojnama does not support the contention of defendants. The argument was heard and order was passed on the same day. Therefore it is not necessary to mention in the rojnama argument heard because order itself shows that argument heard. Thus, the contention of the defendants that the order was passed without hearing is not supported by the record.

9. Section 114 CPC read with Order XLVII Rule 1 CPC provides the limited scope of review. A review may lie only on the following grounds:

(i) discovery of new and important matter or

evidence, which after exercise of due diligence was not within the knowledge of the applicant or could not be produced;

(ii) mistake or error apparent on the face of the record; or

(iii) for any sufficient reason, which has been judicially interpreted to include misconception of fact or law.

10. The Hon'ble Supreme Court in **S. Murali Sundaram vs. Jothibai Kannan (supra)** has reiterated that review proceedings are not an appeal in disguise. A review cannot be sought merely because a party is dissatisfied with the decision on merits. Only an error apparent on the face of the record and one that is self-evident and does not require long-drawn reasoning can justify a review.

11. In the present case, the defendants have not shown any discovery of new matter or evidence. They have also failed to demonstrate any error apparent on the face of the record. Their grievance essentially relates to the correctness of the decision on merits of Exh. 16, which is beyond the scope of review jurisdiction. A rehearing of the matter is impermissible.

12. Once the order dated 05/03/2021 was passed on Exh. 16, this Court became functus officio with respect to that issue. The defendants, if aggrieved, ought to have approached the appellate or revisional forum.

Allowing review in the present circumstances would amount to sitting in appeal over one's own order, which is not permissible under law.

13. In view of the above considerations and reasons, there are no grounds made out under Section 114 or Order XLVII Rule 1 CPC to allow this review application. Thus an application deserves to be rejected. Hence the following order is passed.

ORDER

The application at Exh. 32 is rejected.

Date : 19/09/2025
Place : Ghodegaon

Sd/-
(Sneha Sunil Pulumkar)
2nd Jt. Civil Judge Junior Division,
Ghodegaon, Dist. Pune.