

R.C.S. No. 154/2023

Akshay Vs. Sunil

CNR No. MHSN14000835-2023

Order Below Exh. 29

The present application is filed by plaintiff for review of Order passed below Exh. 17 (application for appointment of T.I.L.R.)

2] It is contended by the plaintiff that, application Exh. 17 was filed by the plaintiff for appointment of T.I.L.R for measurement of gat no. 509/2 and 509/3 situated at Sagaon. Application Exh. 5 as well as application Exh. 14 (status-quo) was pending. While deciding application Exh. 17 this court by observing that application Exh. 17 was given to collect evidence, rejected it. Plaintiff has not pressed Exh. 5 and 14. Therefore, now there is no question of collecting evidence for proving case prima-facie. In order to sort out boundary dispute between parties it is necessary to appoint T.I.L.R. If application is allowed no prejudice will be caused to the defendant. Hence, plaintiff pray to allow his review application.

3] The defendant has file say Exh. 30 and denied contents in application. He has contended that, application Exh. 17 is decided on merit. In fact, plaintiff has filed Chalan of Rs. 3000/- dated 22/11/2018 and measurement of both the properties were done. Plaintiff has concealed the fact that he has encroached in the gat no. 509/3 of defendant and filed application Exh. 17. As the application Exh. 17 was decided on merit, plaintiff has no right to ask for review order. Thus, defendant prayed to reject the application.

4] Heard Ld. advocate for plaintiff and defendant. They argued in the tune of their contentions. Ld. Advocate for plaintiff relied upon- Tirupati rao Vs. Linganaiah & Ors (SC) decided on 22 July, 2024. *wherein it is held that since the first respondent had discovered new evidence which was unavailable at the earlier stage of proceedings, the threshold for maintainability of review petition was satisfied.*

5] Points arise for determination along-with findings and reasons thereon are as under.

Sr. No.	Points	Findings
1	Whether the plaintiff has made out grounds to review the order dated 22/02/2024 passed below Exh 17 ?	No
2	What order ?	The application is rejected.

REASONS

As To Point No. 1.

6] It is settled beyond any manner of controversy that the grounds of review are extremely limited. The person seeking review of order must bring his case within the four corners of the provisions of order 47 Rule 1 of CPC. Those are (i) discovery of new and important matter of evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by me at the time when the order was made, (ii) mistake of error apparent on the face of the record or, (iii) for any other sufficient reason.

7] Keeping in view the aforesaid legal position I have scrutinized the impugned order along with reasons set out in the application. Foremost thing is that order below Exh.17 (appointment of T.I.L.R) is passed and application came to be rejected. Now the main thrust of the argument of plaintiff is that he has not pressed application Exh. 5 and 14.

8] On perusal of record it reflects that, application Exh. 5 and 14 were pending. Thereafter plaintiff filed application Exh. 17 for appointment of T.I.L.R. On hearing both sides application Exh. 17 came to be rejected on the ground that, as Exh. 5 is pending and plaintiff has to prove prima-facie case in his favour, said application is filed only to collect evidence. Thus from said order it appears that order is passed with reason. To my mind, merely after passing order below Exh. 17, plaintiff non pressed application Exh. 5 and 14 cannot be a ground for review. So also, it is not the contention of plaintiff that he discovered new evidence which was unavailable at earlier stage. Therefore, citation relied upon by plaintiff is not applicable in case in hand.

9] After scrutiny of the aforesaid factual position coupled with legal position, to my mind, the plaintiff has measurably failed to point out a single ground to review impugned order. It goes without saying that the purpose of review application cannot be rehearing for the purpose of seeing whether a different conclusion on merit could be adopted. Coming to the three parameters as aforesaid, there is no discovery of new and important matter of evidence. Secondly there is no mistake or error apparent on the face of record. An error apparent on the face on record means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivably with two opinions.

10] I have placed reliance on Spanco Ltd Vs. A 2Z Maintenance and Engineering Services Ltd and another, 2010 (7) Mh.L.J. 391 wherein the Hon'ble Revision Bench of the parent High Court held that the scope of review is for review of an error apparent only and not to review the judgment or order, even if the parties are in position to satisfy the court that the order under review is an erroneous order.

Smt.Meera Bhanja Vs Smt Nirmala Kumari Choudhari AIR 1995 S.C.455 wherein the Hon'ble Apex Court has considered the limited scope of review and it is held that the review court not to act as appellate court.

11] From the overall factual and legal position, I found no illegality or error in passing order below Exh. 17. There is no other sufficient reason to interfere in said order. As such, the application for review moved under order 47 of the Code of Civil Procedure needs to be rejected. Hence I answer point no. 1 in the negative and passed the following order to answer point no.2.

ORDER

Application Exh. 29 is hereby rejected.

Shirala
Date- 15/02/2025

(Smt. V. A. Desai)
Jt. Civil Judge Junior Division,
Tal- Shirala, Dist- Sangli.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Clerk	:	M.S.Gondkar
Court	:	Jt. C.J.J.D. & J.M.F.C., Shirala
Date	:	15/02/2025
Judgment signed by the		
Presiding Officer on	:	15/02/2025
Judgment uploaded on	:	17/02/2025