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Review Application No. 1/2022
CNR NO.: MHKO07-001897-2019

MHKO070018972019



Sou. Shakuntala Jaypal Magdum and others
V/s.
Bhikaji Babu Patil and others

ORDER PASSED BELOW EXH. 1

1] Plaintiffs in Special Civil Suit No. 12/2017 have taken out present application for review of the judgment passed in said suit. They have filed present application as per Section 144 of Code of Civil Procedure seeking corrections in errors appearant on face of record in judgment.

2] Parties to the present review application will be referred as "plaintiffs" and "defendants" i.e. as per their nomenclature in suit, for the sake of convenience.

3] Plaintiffs case in brief is that, they had filed suit for refund of earnest amount and compensation. Defendants predecessor Babu Dhondu Patil had obtained Rs. 55,000/- from plaintiff No.1 as per agreement dtd. 18/6/1997. After receipt of amount he delivered possession of the suit property to the plaintiffs. Thereafter, on 14/02/2012 defendants

received further amount of Rs. 2,50,000/- towards consideration and possession of suit property was deliver to the plaintiffs.

4] According to plaintiffs, as defendants had acquired more portion than owned by them. Thereafter defendants excess portion was acquired by Government. Defendants have handed over possession on said potion to the government without informing plaintiffs. However, they have informed in writing about it to the government. Thus, there is breach of agreement.

5] According to plaintiffs, above suit was proceeded ex-parte against defendants. This court has directed defendants to pay Rs. 2,50,000/- alongwith interest @ 9% p.a. to the plaintiffs from the date of suit.

6] According to plaintiffs, after perusal of the judgment of the court it was found by plaintiffs that, plaintiffs suit is based on two agreements dtd. 18.6.97 and dtd. 14.12.2012. However no any reference in respect of the agreement dtd. 18/6/1997 is made by the court in its judgment. Though those agreements were on record vide Exh. 26 and 27 respectively.

7] According to plaintiffs erroneously this court has not made reference of Exh. 26 in its judgment, while passing decree in favour of plaintiffs. Therefore, there is no any reference of Rs. 55,000/- which are required to be received by plaintiffs as per agreement at Exh. 26. It is error required to be reviewed. It is error appearant on the face of record. Hence, this application be allowed and reference of agreement vide Exh. 26 be made in the judgment as well amount of Rs. 55,000/- be added in the decree as per said agreement at Exh. 26. Hence this application.

8] After issuance of notice defendant Nos. 1 and 2 were served with it but did not appeared. Hence, the present application is proceed ex-parte against them

9] Heard learned Advocate for plaintiffs. Gone through record and proceedings. Following points arise for my determination to which I have recorded my findings thereon along with detail reasons to follow.

Sr.No	Points	Findings
1.	Whether plaintiffs are entitled for relief sought ?	... In the Affirmative
2.	What order?	...As per final order.

R E A S O N S

AS TO POINT NOS. 1 and 2

10] The plaintiffs are seeking review of the judgment as per Section 114 of the Code of Civil Procedure, 1908. This provision is a exception to the general rule of appeal. It empowers the court to review its own judgment to rectify any appearant error or mistake in the decision so rendered. The procedure to exercise the power of review is provided under Order 47 of Code of Civil Procedure.

11] In my opinion, the provisions of review u/s. 114 can not be equated with the provisions of Section 152 and 153 of the Code of Civil Procedure wherein the court under its inherent power may correct any arithmetical or typographical or accidental slip of tongue error, in the order, decree and the proceedings. If present case plaintiff has filed suit for recovery of amount on the basis of two agreements i.e. agreement dtd. 18/06/1997 and subsequent agreement dtd. 14/02/2012. Both the agreements are exhibited in suit. They are duly proved by P.W. Nos. 1 to 3. It is matter of record that, while passing the judgment this court has discussed the contents and proof of both above agreements at Exh. 26 and 27. However, while granting the relief it is granted only to the extent of amount mentioned in agreement Exh.27 i.e. Rs. 2,50,000/-. Inadvertently or

erroneously this court has not mentioned and added the amount of Rs. 55,000/- in respect of first agreement exh.26 dtd. 18/06/1997, though it is discussed in judgment that both the agreements are proved by the witnesses of the plaintiff.

12] In addition to above facts it is necessary to mention that, agreement Exh.26 was execute in favour of plaintiff No.1. P.W.No. 2 Rajgonda Patil in his evidence has proved the attestation and execution alongwith contents of this agreement. Plaintiffs office copy of notice i.e. Exh. 28 is inconsonance with their plaint and evidence on record. It is having reference of both agreements Exh. 26 and 27. The entire amount demanded in said notice by plaintiffs from defendants as of Rs. 3,05,000/- i.e. Rs. 55,000/- with reference to Exh. 26 and Rs. 2,50,000/- with reference to Exh. 27.

13] In my opinion, the contents of plaint, plaintiffs prayer clause in the plaint and documentary as well oral evidence adduced by plaintiffs witnesses which remained unchallenged during trial clearly show error appearant on the face of record made by the court while passing judgment at Exh. 29 in Special Civil Suit No. 12/2017. The decree is also erroneously passed for the amount of "Rs. 2,50,000/-" instead

of passing it for "Rs. 3,05,000/-".

14] It is matter of record that, suit was uncontested. No appeal is preferred against the judgment and decree dtd. 2/8/2019 by either of the parties to the suit. The reasons mentioned in the application by plaintiffs are sufficient to allow review and correct the operative part of judgment in S.C.S.No. 12/2017 by the relevant modification or rectification in said decision. Hence, I answer point No. 1 in affirmative and in order to answer point No.2, proceed to pass following order.

ORDER

- (1) Review Application No. 1/2022 is allowed in the interest of justice.
- (2) The necessary corrections/modification in the judgment passed by this court at Exh. 29 in Special Civil Suit No. 12/2017 be carried out by mentioning them in additional paragraph No.9 in said judgment.
- (3) The operative part of the judgment as well decree be modified accordingly.
- (4) Present proceeding is closed accordingly.

Date- 11/09/2023.
Jaysingpur.

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