

Order Below Exh. 1 in Civil Review Application No. 1/2018

This is an application under Order 47 Rule 1 and Section 114 of the Civil Procedure Code for review of the order dated 17.11.2017 in M.C.A. No. 94/2017.

2 In brief, it is stated in the application that, the applicant herein had filed Spl.C.S. No. 93/2017 wherein he also moved an application for temporary injunction vide Exh. 5. Said application was rejected by the Ld. C.J.S.D. by his order dated 29.06.2017. Said order passed by the Ld. C.J.S.D. was brought in appeal in M.C.A. No. 94/2017. This Court decided M.C.A. No. 94/2017 on 17.11.2017 whereby the order passed by Ld. C.J.S.D. dated 93/2017 was confirmed.

3 Being aggrieved by the order passed by this Court dated 17.11.2017 in M.C.A. No. 94/2017 the applicant has preferred this review application on the ground that, there is gross mistake or error apparent on face of the record committed by this Court. So also the applicant has discovered some new material about forged nature of document on the basis of which respondent has obtained favorable order.

4 The application is opposed by the respondents No. 1-5, 9 and 10 by filing their detailed say vide Exh 18. Reply of respondents

7 and 8 is at Exh 20. It is contended by respondents that, the conditions enumerated under Order 47 Rule 1 of C.P.C. are not satisfied. Hence, the present application is not maintainable. It is not in limitation. The grounds mentioned in the application are not correct and relevant. There is no due diligence on the part of the applicant. There is no error apparent or mistake as contemplated under Order 47 Rule 1 of C.P.C. Hence, the respondents have prayed to dismiss the review application.

5 Heard the Ld. Advocate for the applicant and respondents. They have argued as per their respective contentions.

6 As rightly relied by Ld. Advocate for respondents the scope of appellate power and review power is enlightened by Hon'ble Supreme Court in case of ***Sivakami & Ors. Vs. State of Tamil Nadu & Ors. (2018 SAR (Civil) 817)***. The Hon'ble Supreme Court has observed as under :

20 The scope of the appellate powers and the review powers are well defined. The power of review under Order 47 Rule 1 of the Code of Civil Procedure, 1908 is very limited and it may be exercised only if there is a mistake or an error apparent on the face of the record. The power of review is not to be confused with the appellate power. The review petition/application cannot be decided like a regular intra court appeal. On the other hand, the scope of appeal is much wider wherein all the issues raised by the parties are open for examination by the Appellate Court.

7 Further more as per Order XLVII, Rule 1 of CPC review of a judgment or an order could be sought :

- (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant;
- (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and
- (c) on account of some mistake or error apparent on the face of record or any other sufficient reason".

8 On perusal of above proposition and provision it is clear that, the principles for interference in exercise of review jurisdiction are well settled. The Court passing the order is entitled to review the order, if any of the grounds specified in the aforesaid provision are satisfied. The party must satisfy the Court that, the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other "sufficient reason" must satisfy that, the said reason is analogous to the conditions mentioned in Order 47 Rule 1 CPC. Thus, the instant case requires consideration in view of the aforesaid settled legal propositions.

9 The contention of the applicant is that, both the Courts have given much importance to agreement dated 20.05.2005. It is the contention of the applicant that, agreement dated 20.05.2005 is executed on stamp bearing No. 511567. Therefore, after passing of the order by this Court on 17.11.2017 he made an application with Treasury Office under Right to Information Act and inquired and obtained information when the stamp bearing No. 511567 was issued for sale. In pursuance to his application the Treasury Office has informed him that, the stamp bearing No. 511567 was released from Treasury Office on 18.04.2016 and it was given to stamp vendor Mahnta and on further inquiry the Sub-Registrar North Solapur has intimated the applicant that, the stamp vendor Mahnta has sold said stamp of Rs.100/- to respondent No. 1 Dattatray Aadake on 04.05.2016. It is the contention of the applicant that, the stamp of Rs.100/- was purchased by respondent No. 1 on 04.05.2016 and back dated document dated 20.05.2005 is fraudulently prepared on the same and this Court and as well as the Ld. Lower Court has relied upon the agreement dated 20.05.2005 and passed the order against the plaintiff. Therefore, there is error apparent on face of record. It is further contended that, the judgment and decree obtained by playing fraud is nullity and therefore, the order passed by this Court is required to be reviewed.

10 Undoubtedly it can be seen that, agreement dated

20.05.2005 is executed on stamp bearing No. 511567 and as per the information received under R.T.I. said stamp was released for sale from Treasury Office on 18.04.2016 and it was given to stamp vendor Mahnta and on further inquiry the Sub-Registrar North Solapur has intimated the applicant that, the stamp vendor Mahnta has sold said stamp of Rs.100/- to respondent No. 1 Dattatray Aadake on 04.05.2016. Thus, *prima facie* it appears that, the stamp was purchased on 05.05.2016 whereas the agreement is dated 20.05.2005.

11 In this background only question that arises for my consideration is whether the case put forth by applicant on the basis of above mentioned facts has made out a case for reviewing the judgment and order dated 17.11.2017 and whether it satisfies the above mentioned criteria for entertaining the same in review jurisdiction ?

12 First I shall consider this application on the ground of discovery of new evidence. When a review is sought on the ground of discovery of new evidence, it is not only the discovery of new and important evidence that entitles a party to apply for a review, but the party must show that, after due diligence it was not within the knowledge of the party when the decree was made. The word due diligence is not explained anywhere. I may refer here the observation of The Hon'ble Bombay High Court in the case of **Bharat**

Petroleum Corporation Vs Precious Finance Investment Pvt. 2006

(6) BomCR 510 wherein the meaning of 'due diligence' is explained as under.

“15. The Dictionary meaning of the expression "due diligence" as given in the Blacks Law Dictionary, Sixth Edition, 1990 means "Such a measure of prudence, activity or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case." Similarly the Law Lexicon by P.Ramanatha Aiyer, Second Edition (Reprint) 2001 explains "due diligence" to mean such watchful caution and foresight as the circumstances of the particular case demands. While examining the explanation offered or cause shown as to why inspite of due diligence a party could not have raised the matter before commencement of trial, the court may have to see the circumstances in which the party is seeking amendment. In short the explanation as to "due diligence" depends upon the particular circumstances and the relative facts of each case to reach a conclusion one way or the other.”

13 While applying those test to present case it revealed that, the defendant appeared in the matter on 15.06.2017. He filed his written statement along with the xerox copy of the stamp bearing No. 511567. He took a defence that, on 20.05.2005, agreement was executed between the parties. That means in Lower Court before the

decision of application at Exh. 5 plaintiff was aware that, defendant has brought into existence a fraudulent document. The plaintiff did not seek any information under R.T.I. from the authorities to find out when stamp bearing No. 511567 was released for sale. Thereafter, Exh. 5 application was decided. Said order was carried in appeal. During the pendency of appeal also he made no efforts to bring on record that, stamp purchased on 04.05.2016 is used for agreement dated 20.05.2005 and it is fraudulent document, though he had a knowledge about it. No explanation is furnished as to why these grounds had not been taken earlier. As of today also the suit is not amended. It is not the case of applicant that, these facts were not in his knowledge and were discovered later on. It is necessary to mention here that, the said order dated 17.11.2017 was passed after considering all relevant facts and circumstances and entire material placed on record of the M.C.A. No. 94/2017 as well as all submissions made by the Ld. Advocates of both parties, at the time of hearing. Said order is not further challenged. An error can be said to be apparent on the face of the record only if such error is patent and can be located without any elaborate argument and without any scope for controversy with regard to such error, which stares at the face even by a mere glance of the judgment. There is no error apparent on the face of the record, nor there is any sufficient ground, on the basis of which this review application can be entertained. Hence, I am inclined to pass the following order.

ORDER

Application stands rejected.

Sd/-

Place : Solapur
Date : 10.10.2018

(Y. G. Deshmukh)
District Judge - 6, Solapur.

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C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : Yasmin G. Deshmukh,
District Judge – 6 &
Addl. Sessions Judge, Solapur.
- (c) Order signed by P.O. on : 17.10.2018
- (d) Order uploaded on : 17.10.2018