

SURESH G. RAMNANI

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v.

AURELIA ANA DE PIEDADE MIRANDA @ ARIYA
ALVARES (DEAD THR. LRS) & ORS.

(Civil Appeal No. 8293 of 2022)

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NOVEMBER 10, 2022

[ANIRUDDHA BOSE AND VIKRAM NATH, JJ.]

Judicial propriety: Application seeking hearing of review by a particular judge – Matter to be placed on the administrative side or order to be passed on judicial side – Held: Once an application was preferred by any of the parties that a review may be heard by the Judge who had decided the matter and had passed the order from which the review arose, the matter ought to have been placed before the Chief Justice on the administrative side rather than order being passed on the judicial side – Proviso to r. 3(1) of Chapter XXX of the Rules confers power on the Chief Justice to assign a particular matter to a Single Judge for hearing of the review application where the Single Judge concerned was not available for the time being by reason of being on leave or otherwise where he had ceased to sit at a particular Bench – Chief Justice, being the master of roster and being conferred with specific powers of assigning review petitions in given circumstances under the Rules – On facts, the Single Judge ought not to have dealt with the application but should have referred the matter to be placed before the Chief Justice – In view thereof, direction to the Registry of the High Court to place the application on the administrative side before the Hon'ble Chief Justice for appropriate orders – Bombay High Court Rules – Chapter XXX, r 3(1) – Code of Civil Procedure, 1908 – Ord. 47 r. 5.

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Malthesh Gudda Pooja v. State of Karnataka (2011) 15 SCC 330; Goel Ganga Developers India Pvt. Ltd. v. Union of India through Secretary Ministry of Environment and Forests and others (2018) 18 SCC 257; Maharashtra Housing & Development Authority v. P V Anturkar (2009) 3 Mh Lj 266; Ratanlal Nahata v. Nandita Bose (1998) 3 CALLT 348 HC – referred to.

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Case Law Reference**(2011) 15 SCC 330 referred to Para 13****(2018) 18 SCC 257 referred to Para 13**

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8293 of 2022.

From the Judgment and Order dated 16.07.2019 of the High Court of Bombay at Goa in Misc. Civil Application No.526 of 2019 in Civil Application (Review) No.7 of 2019 in Second Appeal No. 98 of 2013.

C Huzafa Ahmed, Sr. Adv., Aman Vachher, Dhiraj, Ashutosh Dubey, Mrs. Anshu Vachher, Abhishek Chauhan, Akshat Vachher, M/s Vachher and Agrud, Advs. for the Appellant.

Nakul Dewan, Sr. Adv. and Chirag M. Shroff, Adv. for the Respondents.

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The Judgment of the Court was delivered by

VIKRAM NATH, J.

Leave granted.

E 2. This is defendant's appeal assailing the correctness of the order dated 16.07.2019 passed by Justice Prithviraj K. Chavan, rejecting the Misc. Civil Application No.526 of 2019 in Civil Application (Review) No.7 of 2019. The order reads as under:

"Heard Mr. M. Amonkar, learned Advocate for the applicant.

F 2. In view of the clause (3) of Chapter 13 of the Bombay High Court Appellate Side Rules prayer (a) of the application cannot be granted.

3. Mr. N. Fernandes, learned Counsel submits that matter be placed after 5th October, 2019.

4. At his request, stand over to 07.10.2019"

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3. A bare reading of the impugned order extracted above would raise a hundred doubts in the mind as to why this petition has been filed. However trivial, we may consider the issue at hand, but considering the seriousness and the length of arguments advanced by the learned Senior Counsels, we were compelled to reserve the judgment and give a serious thought to the issue.

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FACTS

4. The respondent instituted a suit on 11.01.1985 for declaration and permanent injunction registered as Regular Suit No.21 of 1985 in the court of Civil Judge, Junior Division, at Margao titled “Mrs. Aurelia Ana da Piedade Miranda Araujo Alvares and others vs. Mr. Gobindram Jethanand Ramnani and others”. After the contest, the Trial Court decreed the suit vide judgment and order dated 26.08.2003. The appellant preferred an appeal under section 96 of Code of Civil Procedure, 1908¹, in the court of District Judge at Margao, Goa, registered as Regular Civil Appeal No.83 of 2013, titled “Mr. Suresh G. Ramnani Vs. Mrs. Aurelia Ana da Piedade Miranda alias Araiyo Alvares and others”. This appeal initially came to be dismissed vide judgment and order dated 22.04.2008. The second appeal under section 100 CPC was preferred by the appellant which came to be allowed vide judgment and order dated 02.03.2012. The High Court remanded the matter to the First Appellate Court for a fresh decision. After remand the first appeal was again dismissed vide judgment and order dated 09.07.2012.

5. Aggrieved by the same, Second Appeal No.98 of 2013 was preferred by the appellant in the High Court of Bombay at Panaji, Goa, titled “Mr. Suresh G. Ramnani vs. Mrs. Aurelia Ana da Piedade Miranda alias Araiyo Alvares and others”. In the second appeal judgment was reserved by Justice G.S. Patel vide order dated 10.12.2017. It would be relevant to note that Justice Patel at the relevant time was sitting at the Goa Bench of the Bombay High Court.

6. To complete the facts, it would be relevant to mention that Justice Patel returned to the Principal Bench at Bombay on 24.10.2017. It is also an admitted fact that on 01.11.2017, certain clarifications were made before the Court (Justice Patel) by the parties through Hybrid mode regarding the issue of whether the parties are arriving at a settlement or not. The second appeal was allowed vide judgment and order dated 30.01.2019. The judgment was delivered through virtual mode by the learned Judge while sitting at Bombay.

7. A Review petition was filed by the respondent on 12.02.2019 registered as Civil Review Application No. 7 of 2019. It was listed before Justice Nutan D. Sardesai and after hearing learned counsel for the

¹ In short “CPC”

A review applicant, the same was ordered to be admitted on 04.03.2019. The said order is reproduced below:

“Heard Shri A. Diniz, learned Advocate for the applicants.

2. Admit.”

B 8. At this stage when the notice of the review was served, an application was moved by the appellant on 16.07.2019 registered as Misc. (Civil) Application No.526 of 2019 with the prayer that the Civil Review Application No.7 of 2019 be ordered to be transferred and be placed before Justice G.S. Patel for final disposal. The said application was supported by an affidavit dated 06.06.2019. The prayer clause as contained in paragraph 9 of the application is reproduced below:

“9. It is therefore prayed that:

(a) The above Civil Review Application No.7/2019 be ordered to be transferred and be placed before his Lordship Justice G.S.Patel in Mumbai for final disposal.

(b) Early date for hearing in the matter be fixed.”

9. The above application has been rejected vide impugned order dated 16.07.2019 by Justice Prithviraj K. Chavan. We are conscious of the fact that normally the names of the judges may not be required to be mentioned in the order but considering the issue involved in the matter, the names have been mentioned.

10. We have heard learned senior counsel for the parties and perused the material on record.

F 11. Shri Huzefa Ahmadi, learned senior counsel for the appellant submitted that review petition should be heard by the same Hon’ble Judge under the provisions of Order 47 Rule 5 of the CPC read with High Court amendments made thereunder for the State of Maharashtra. Order 47 Rule 5 was substituted by Maharashtra Government Gazette dated 15.09.1983 to be effective from 01.10.1983. The said provision reads as under:

“5. Application for review in Court consisting of two or more judges.- Where the Judge or Judges, or any one of the Judge, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or

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are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same. A

HIGH COURT AMENDMENTS B

Bombay - In Order XLVII, for rule 5, substitute the following rule, namely:

“ 5. Application for review in Court consisting of two or more Judges.- Where the Judge or Judges, or any one of the Judges who passed the decree or made the order, a review of which is applied for, continues or continue to be attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of two months next after application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same: C D

Provided that if in the case of a decree or order passed by a Division Bench of two or more Judges of the High Court sitting at any place in the State of Maharashtra, all the said Judges are not available for sitting together at one place when the review application is ready for hearing, the application may be heard by a Division Bench of two or more Judges, at least one of whom, if available, should be the Judge who had passed the decree or order a review of which is applied for.”” E

12. Our attention was also drawn to Chapter XXX Rule 3(1) of the Rules of the Court applicable for the Bombay High Court² which also provided that it should be heard by the same Judge, however, subject to certain situations where such Judge has ceased to be Judge of the High Court or have ceased to sit at the particular Bench, in that event, it would be placed before the Regular Court of the single Judge dealing with that category of the matters. The said provision i.e. Rule 3(1) of Chapter XXX of the Rules is reproduced below: F G

“3.(1) An application for review or for amendment of an order or a decree, for speaking to the minutes passed by a Single Judge of

²In short “Rules”

A this Court shall be placed before that Judge: provided, however, where such Judge has ceased to be the Judge of the High Court or has ceased to sit at the particular Bench, such application shall be placed before the regular Court of the Single Judge dealing with the category of matters to which the proceedings relates as for example: -

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- (a) Writ petition, if the original order had been passed in a Writ Petition;
 - (b) First Appeals, if the original order had been passed in any other Civil matters;
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- (c) Criminal Appeals, if the original order had been passed in any Criminal matters;
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- Provided that, where the Single Judge concerned is not available for the time being by reason of he being on leave or otherwise as aforesaid such application shall be placed before the Court of Single Judge to which the matter may be assigned by the order of the Honourable Chief Justice.”

13. Referring to the above rule, Shri Ahmadi submitted that the Rules having been framed more than 25 years back and considering the advancement of technology and present setup available for virtual hearing through video conferencing and the same Judge being available at the principal seat of the Bombay High Court, the review should have been heard by the same Judge. Shri Ahmadi has also placed reliance upon the following judgments of this Court i.e.:

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- **Malthesh Gudda Pooja vs. State of Karnataka**³
 - **Goel Ganga Developers India Pvt. Ltd. versus Union of India through Secretary Ministry of Environment and Forests and others**⁴

G 14. On the other hand, Shri Nakul Dewan, learned senior counsel appearing for the respondents submitted that the appellant ought not to have carried the matter to this court where the proceedings were being conducted as per the Rules. Shri Dewan has sought to impress upon us by analyzing Rule 3(1) of Chapter XXX of the Rules to state and to

³ (2011)15 SCC 330

H ⁴ (2018) 18 SCC 257

submit that as Justice Patel was no longer sitting at the Goa Bench, Review Petition had to be heard by the Judge having roster of the said categories of the matters to which the proceedings relate i.e. the learned Judge at the Goa Bench hearing second appeals. Further, reliance has been placed upon by Shri Dewan on the same judgment of **Malthesh Gudda Pooja (supra)**. He has also sought to distinguish the judgment in the case of **Goel Ganga Developers India Pvt. Ltd. (supra)**, relied upon by the appellant as the said proceedings were relating to National Green Tribunal and the procedure prescribed therein. Further reliance is place upon the following two judgements:

- **Maharashtra Housing & Development Authority vs. P V Anturkar⁵.**
- **Ratanlal Nahata v. Nandita Bose⁶.**

15. Having considered the submissions, we find that the matter does not raise any factual issue, but it is only a question of interpretation of the Rules, the Court's propriety and jurisdiction. We do not wish to go into the issue of interpreting the Rules in order to hold as to whether the review should be heard by Judge 'A' or any other Judge. However, we are of the view that considering the overall facts and circumstances of the case, once an application was preferred by any of the parties that a review may be heard by the Judge who had decided the matter and had passed the order from which the review arose, the matter ought to have been placed before the Chief Justice on the administrative side rather than order being passed on the judicial side. The proviso to Rule 3(1) of Chapter XXX of the Rules confers this power on the Chief Justice to assign a particular matter to a single Judge for hearing of the review application where the single Judge concerned was not available for the time being by reason of being on leave or otherwise as aforesaid i.e. where he had ceased to sit at a particular Bench. The Chief Justice, being the master of roster and being conferred with specific powers of assigning review petitions in given circumstances under the Rules, the learned single Judge ought not to have dealt with the application dated 16.07.2009 (Misc. Civil Application No.526 of 2019), but should have referred the matter to be placed before the Chief Justice.

16. Accordingly, in the facts and circumstances of the case, we allow the appeal, set aside the impugned order dated 16.07.2019 and

⁵ (2009) 3 Mh Lj 266

⁶ (1998) 3 CALLT 348 HC

- A direct the registry of the High Court to place the said application (Misc. Civil Application No.526 of 2019) on the administrative side before the Hon'ble Chief Justice for appropriate orders.

Nidhi Jain

Appeal allowed.