



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION (L) NO.21934 OF 2024

IN

WRIT PETITION NO.1518 OF 2024

Mr. Mahesh K. Mehta,
age 74 years, Residing at
Flat No.45, Sadhana, 'B' Road,
Churchgate, Mumbai – 400 020.

..Petitioner

Versus

1. The Bharatiya Friend's Co-Operative
Housing Society Ltd.,
A Society Registered under the Bombay
Co-operative Societies Act, 1925
and is deemed to be Registered under
The Maharashtra Co-Operative Societies
Act, 1960 having its registered office at
"Sadhana", 'B' Road, Churchgate,
Mumbai – 400 020.
2. The State of Maharashtra,
Through Marine Drive Police Station,
Having its address at Dinshaw Wacha Road,
Behind Yashodhan Building,
Mumbai – 400 020.
3. Additional Commissioner of Police,
South Zone, Mumbai,
26/32/B, Shepherd Road, Police Colony,
New Nagpada, Madanpura,
Mumbai – 400 008.

..Respondents

WITH

INTERIM APPLICATION (L) NO.22002 OF 2024

IN

REVIEW PETITION (L) NO.21934 OF 2024

IN

WRIT PETITION NO.1518 OF 2024

Mahesh K. Mehta,
age 74 years, Residing at
Flat No.45, Sadhana, 'B' Road,
Churchgate, Mumbai – 400 020.

..Applicant/Petitioner

IN THE MATTER BETWEEN :-

Mahesh K. Mehta,
age 73 years, Residing at
Flat No.45, Sadhana, 'B' Road,
Churchgate, Mumbai – 400 020.

..Petitioner

Versus

1. The Bharatiya Friend's Co-Operative
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South Zone, Mumbai,
26/32/B, Shepherd Road, Police Colony,
New Nagpada, Madanpura,
Mumbai – 400 008.

..Respondents

Mr. Mahesh K. Mehta, Petitioner-in-person.

Mr. Kushal Amin a/w Mr. Kunjan Makwana i/by S. K. Srivastav & Co. for
Respondent No.1.

Mr. A. L. Patki, Addl. G. P for Respondent Nos.2 and 3-State.

**CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.**

Date on which the Arguments were Heard : 19th JULY 2024
Date on which the Judgment is pronounced: 9th AUGUST 2024

JUDGMENT: (per Jitendra Jain, J.)

1. This review petition is filed praying for recall and / or to modify and quash and set aside the judgment and order dated 20th February 2024 passed by this Court, whereby this Court had dismissed the writ petition *inter alia* on the ground that the issues raised in the writ petition are pending before the Co-operative Court before this Court in other proceedings and further no writ petition would lie against Housing Co-operative Society.

2. The primary issue raised in the writ petition was against action of Co-operative Housing Society in not permitting the Petitioner to carry on his activity of receiving paying guest in his flat. The Petitioner had raised the said dispute before various forums' viz., Consumer Disputes Redressal Forum, Co-operative Housing Court and in Criminal Writ Petition No.1399 of 2016 and also in Civil Writ Petition No.5939 of 2024. The Petitioner in Writ Petition (L) No.23115 of 2023 against which review is sought had raised similar issue before this Court and this Court after hearing the Petitioner pronounced its judgment on 20th February 2024 dismissing the said petition on the ground that the issues raised therein are already subject matter of disputes pending before various forums and further no writ petition lies against the Co-operative Housing Society.

3. The Petitioner challenged the aforesaid judgment and order passed on 20th February 2024 before the Supreme court in Special Leave to Appeal (C) No(s).8543-8544 of 2024. The Supreme Court after hearing the Petitioner-in-person passed following order:-

“1. Having heard Mr. Mahesh K. Mehta, the petitioner, who appeared in person and made his submissions through virtual mode, we see no reason to entertain these petitions, taking into consideration that the High Court declined to entertain the Writ Petition before it only on the ground that the main proceeding is pending.

2. In that regard, though the petitioner contends that, during the pendency of the same, there is interference with his rights by the respondents, that is also an aspect which could be brought to the notice of the authority concerned before whom the main proceeding is pending and seek appropriate directions/orders. All contentions in that regard are left open to be urged.

3. With the said observation, the petitions are dismissed. Pending application(s), if any, shall also stand closed.”

4. Post the above order of the Supreme Court, the Co-operative Appellate Court on 2nd March 2024 rejected the review application filed by the Petitioner on the ground that no new facts have been discovered post Co-operative Appellate Court's order and there is no error apparent in the order. On 14th June 2024, in Civil Writ Petition No.5939 of 2024, the Single Judge of this Court by way of interim order permitted the Petitioner to carry out the activity of giving bedrooms for occupation without any obstruction from the Society. On 18th June 2024 in an interim application taken out in Criminal Writ Petition No.1399 of 2016, Co-ordinate Bench of this Court clarified its order dated 7th June 2017 as being self-explanatory.

5. The Petitioner has now approached this Court by filing the present review petition seeking to recall / modify the order passed by this Court in Writ Petition No.1518 of 2024 dated 20th February 2024. The Petitioner has also taken out an interim application praying for condonation of delay of 110 days in filing the review petition.

6. The Petitioner has filed written submissions explaining the delay in filing the review petition. The delay according to the Petitioner, is on account of his pursuing the matters before various forums. The Petitioner in his submissions further relied upon the decision of the Apex Court in the case of *Khoday Distilleries Limited & Ors. vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal*¹ to contend that review petition is maintainable. The Petitioner has thereafter made his submissions on the merits of the case. The Petitioner, therefore, prayed that the review petition be allowed.

7. The learned counsel for Respondent No.1-Cooperative Housing Society opposed the maintainability of review petition on the ground that order dated 20th February 2024 of which review is sought was confirmed by the Supreme Court on 3rd May 2024 and thereafter, the Petitioner has pursued his matter before the Co-operative Appellate Court, before Single Judge of this Court and in Criminal Writ Petition, all these orders in independent proceedings were passed after the order

¹ (2019) 4 SCC 376

of the Supreme Court. The Respondent further submitted that there is no error apparent on record in the order dated 20th February 2024 so as to entitle the Petitioner to pray for recall, but on the contrary the order of which the review petition is sought has attained finality. The Respondent further submitted that there is no adjudication on merits in the order dated 20th February 2024 and, therefore, even on this count there is nothing to review and prayed for dismissal.

8. We have heard the Petitioner-in-person and the Respondents and with their assistance have perused the review petition and the interim application.

9. The first issue which requires consideration is whether the delay of 110 days in filing the review petition can be condoned by this Court. The reason given in the interim application for the delay is the disposal of Special Leave to Appeal (C) No(s).8543-8544 of 2024 filed before the Supreme Court and thereafter the orders passed by the Co-operative Appellate Court rejecting the review, interim order passed in Civil Writ Petition No.5939 of 2024 and order passed in Criminal Writ Petition No.1399 of 2016, all these orders having being passed after the Supreme Court order dated 3rd May 2024. In our view, orders passed by the Co-operative Court rejecting the review application, interim order passed in Civil Writ Petition No.5939 of 2024 and order passed in

Criminal Writ Petition No.1399 of 2016 cannot constitute reasonable cause in the facts of the present case for the delay in filing the present review petition. The orders passed post the Supreme Court's order are passed in independent proceedings which were already pending on 20th February 2024. In the review petition, the Petitioner is seeking review of the order passed by this Court on 20th February 2024 which got confirmed by the Supreme Court on 3rd May 2024. In our view, in the facts of the present case there does not exist any sufficient cause for condoning the delay in filing the review petition.

10. Even otherwise, even if delay is condoned, question arises whether the Petitioner is justified in seeking the review of the order dated 20th February 2024 passed in Writ Petition (L) No.23115 of 2023. This Court had dismissed the writ petition on the ground that the issues raised therein are subject matter of proceedings before various forums and furthermore no writ would lie against Co-operative Housing being a private entity. The Petitioner challenged the said order before the Supreme Court in Special Leave to Appeal (C) No(s).8543-8544 of 2024 and the Supreme Court declined to interfere in the order passed by this Court. However, the Supreme Court observed that the Petitioner can raise the issue of interference with his rights by the Co-operative Housing Society before the authorities before whom the proceedings were pending. Insofar as, Writ Petition No.1518 of 2024, is concerned

there were no proceedings pending on the date of the Supreme Court order and furthermore paragraph 2 of the Supreme Court refers to the proceedings which were pending and which were referred to in our order dated 20th February 2024. The order dated 20th February 2024 has therefore reached finality. The Petitioner has failed to show any mistake apparent from record insofar as, our order dated 20th February 2024 is concerned, so as to exercise our jurisdiction. Furthermore, in review we cannot quash our order which has attained finality. The finding given by this Court on 20th February 2024 that no writ lies against the Co-operative Housing Society has become final, and the same is also not challenged in the Review Petition. In the written submissions filed by the Petitioner has stated that since he has complied with conditions mentioned in order dated 20th February 2024, this Court should recall its order and adjudicate on the merits. We are afraid we cannot accept this submission for the reason that in the order of 20th February 2024, no condition was mentioned to be complied with by the Petitioner, so as to entitle him to file the review petition for recalling of the said order.

11. The Petitioner has relied upon the decision in the case of *Khoday Distilleries Limited (supra)* (although in the written submissions no citation is given except the name of Khoday Distilleries) in support of his submissions on maintainability of the review petition. In our view, the said decision is not applicable to the facts of the Petitioner's case.

This Court while passing the order of 20th February 2024 dismissed the petition without going into the merits of the case on the ground that the disputes raised therein are already subject matter of proceedings before various forums and further no writ would lie against Co-operative Housing Society. This Court did not give any finding on the merits of the case. In the review petition also nothing has been pointed out which would constitute error apparent on record for seeking review of the order. Also the proceedings which have been referred to in our dated 20th February 2024 are pending even today before various forums and have not reached the finality. Therefore, in our view, the decision relied upon by the Petitioner in *Khoday Distilleries Limited (supra)* is not applicable since the Petitioner has failed to show what is error apparent in the order of 20th February 2024. This Court in review petition cannot adjudicate the merits of the dispute which this Court had refrained to do so in its order dated 20th February 2024.

12. In view of above, no case is made out for this Court by the Petitioner for seeking review of our dated 20th February 2024. Review Petition and the Interim Application are dismissed.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]