

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 28th OF NOVEMBER, 2023

REVIEW PETITION No. 1012 of 2022

BETWEEN:-

- 1. RAMESH S/O RAMVILAS KUMAVAT, AGED ABOUT 64 YEARS, OCCUPATION: FARMER R/O GRAM ARANDIYA TEHSIL KANADIYA (MADHYA PRADESH)**
- 2. BABULAL S/O BADRILAL KUMAVAT, AGED ABOUT 56 YEARS, OCCUPATION: FARMER GRAM ARANDIYA, TEHSIL KANADIYA, DISTRICT INDORE (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI AMIT AGRAWAL – SENIOR ADVOCATE WITH SHRI YOGESH KUMAR MITTAL – ADVOCATE)

AND

- 1. RAMGOPAL S/O SHRI BADRILAL KUMAVAT, AGED ABOUT 70 YEARS, OCCUPATION: FARMER R/O WARD NO. 14 AJNOD ROAD KESARIPURA TEHSIL SANWER (MADHYA PRADESH)**
- 2. STATE OF MADHYA PRADESH THROUGH COLLECTOR COLLECTORATE, MOTI TABELA, DISTRICT INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI R. S. CHHABRA – SENIOR ADVOCATE WITH SHRI VIVEK

PHADKE – ADVOCATE FOR RESPONDENT NO.1 AND SHRI MUKESH PARWAL – G.A./P.L FOR RESPONDENT NO.2/STATE)

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This petition coming on for admission this day, the court passed the following:

ORDER

- 1] Heard finally, with the consent of the parties.
- 2] This review petition has been filed the petitioners under Order XLVII Rule 1 of CPC read with Chapter 4 Rule 13 of the High Court of Madhya Pradesh Rules, 2008 for review of the order passed by this Court in W.P. No.11457 of 2022 dated 13.06.2022 whereby the petition was allowed to be withdrawn with liberty to file a Civil Suit. Subsequently, a Civil Suit No.803-A/2022 was also filed by the respondent No.1 stating that he has been directed by the High Court to file the civil suit and when an application under Order 7 Rule 11 of CPC was filed, the trial Court relying upon the order passed by this Court on 13.06.2022 in W.P. No.11457 of 2022, which led the petitioners to file a Writ Appeal No.1043 of 2022, which was decided on 07.09.2022 whereby the Division Bench of this Court has observed that the proper remedy available to the appellants is to file a review petition. Petitioners' grievance is that the word liberty to file a civil suit has been misused by the respondent No.1 and thus, the present review petition has come to be filed. The delay in filing the review petition has already been condoned by this Court on 11.10.2022 and the order passed by this Court in W.P. No.11457 of 2022 has already been stayed.
- 3] Senior counsel for the petitioners has drawn the attention of this

Court to the pleadings of the civil suit, which has been filed by the respondent No.1 in paras 4 and 9 and also to the reply filed by the plaintiff to the application filed by the petitioners under Order 7 Rule 11 of CPC before the trial Court in para 3 and it is submitted that the plaintiff has clearly misused the liberty extended by this Court in W.P. No.11457 of 2022 and has in fact played a fraud with the Court in making such averments in the civil suit and interpreting in such manner the order passed by this Court to suit his purpose. Thus, it is submitted that in such circumstances, when the order has been misused by the respondent No.1/plaintiff in filing the civil suit, it deserves to be recalled. Senior counsel has also relied upon a decision rendered by the Supreme Court in the case of *Union of India and others Vs. M.K. Sarkar* reported as (2010) 2 SCC 59 paras 15 and 16. Thus, it is submitted that the order passed by this Court be recalled and the petition be allowed with costs.

4] Prayer is opposed by Shri Chhabra, senior counsel for the respondent No.1/plaintiff and it is submitted that in impugned order, there does not appear to be any illegality or error on the face of the record. However, Shri Chhabra has submitted that due to inadvertence only on the part of the counsel for the plaintiff in the trial court, in drafting the plaint, it has been mentioned that a direction has been made by this Court to file the civil suit and since the copy of the order was also filed along with the civil suit, the trial Court has rightly interpreted the order.

5] Shri Chhabra has also relied upon **D.R. Somayajulu, Secretary, Diesel Loco Shed and South Eastern Railway House**

Building Cooperative Society Limited, Visakhapatnam and others Vs. Attili Appala Swamy and others reported as (2015) 2 SCC 390; **Jagdish Arora and Ors. Vs. State of M.P. and Ors.** reported as MANU/MP/1184/2021; **Parsion Devi and others Vs. Sumitri Devi and others** reported as (1997) 8 SCC 715); and **Chandrakant Pandurang Shingade and another Vs. Walchand Gulabchand Bora and another** reported as 2019 SCC OnLine Bom 1669.

6] Heard counsel for the parties and perused the record.

7] So far as the order passed by this Court in W.P. No.11457 of 2022 dated 13.06.2022 is concerned, the same reads as under:-

“Counsel for the petitioner prays for withdrawal of this petition with liberty to file a civil suit.

Prayer appears reasonable.

The petition is dismissed as withdrawn with the liberty as aforesaid.”

8] At this juncture, it would also be apt to refer to the decision in the case of *M.K. Sarkar, (supra)* the relevant paras of the same read as under:-

“15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A court or tribunal, before directing “consideration” of a claim or representation should examine whether the claim or representation is with reference to a “live” issue or whether it is with reference to a “dead” or “stale” issue. If it is with reference to a “dead” or “stale” issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct “consideration” without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.”

(emphasis supplied)

9] So far as the cause of action pleaded by the plaintiff in para 9 of the plaint is concerned, the same reads as under:-

“9. यह कि , वादी को इस वाद को प्रस्तुत करने का कारण जब प्रतिवादी क्रं 1 द्वारा बिना वादी की जानकारी के प्रतिवादी क्रं 3 का नाम राजस्वा प्रकरणों में दर्ज किया जब दिनांक 10-05-2007 को वादी बीमार होने से अस्पताल में भर्ती रहा एवं वहां से स्वस्थ- होने के बाद वादग्रस्तो स्थान पर गया एवं उसे प्रतिवादी क्रं. 3 द्वारा किये गये अवैध कार्य की जानकारी मिली तब , दिनांक 13 -06-2022 को जब माननीय उच्चा न्यायालय द्वारा वादी को इस माननीय न्यायालय में यह प्रकरण प्रस्तुत करने हेतु निर्देशित किया तब-तब से प्रतिदिन उत्परन्न हुआ होकर वादी का वाद अंदर मियाद पेश है।”

(emphasis supplied)

10] Whereas, para 3 of the reply filed by the plaintiff to the application filed under Order 7 Rule 11 of CPC reads as under:-

“3. यह कि, इस तरह माननीय उच्च न्यायालय खण्डपीठ इन्दौर के निर्देशानुसार वादी द्वारा यह वाद माननीय न्यायालय के समक्ष समयावधि में प्रस्तुत किया गया है। यदि प्रकरण अवधि विधान के बाहर होता तो माननीय उच्च न्यायालय वादी को वाद प्रस्तुत करने

की अनुमति प्रदान नहीं करता। इस तरह प्रतिवादी द्वारा जो तथ्य इस आवेदन पत्र में उठाये गये हैं उनका निराकरण माननीय उच्च न्यायालय द्वारा पूर्व में ही किया जा चुका है एवं इस तरह वादी का नियत समयावधि में प्रस्तुत है।”

(emphasis supplied)

11] A perusal of the aforesaid reply filed by the plaintiff makes it more than clear that the plaintiff has tried to mislead the trial Court by stating that a direction has been issued by this Court to the plaintiff to file a civil suit. It is equally surprising that the plaintiff has also stated that had the suit been barred by limitation, the High Court would never have permitted to file the civil suit and thus, it is also stated that the issue of limitation has already been decided by the High Court and, hence, the suit is within limitation. What is really surprising is the manner in which the trial Court has also read the order passed by this Court in W.P. No.11457 of 2022 dated 13.06.2022.

12] A perusal of the order dated 17.08.2022 passed by the trial Court rejecting the petitioner’s application filed under Order 7 Rule 11 of CPC, *inter alia*, following observations have been made:-

“ऐसी स्थिति में परिसीमा अधिनियम के अंतर्गत वाद का अवधि बाह्य होने के आधार पर आदेश 7 नियम 11 (डी) सीपीसी के उपबंध आकृष्टर नहीं होते हैं। इसके अतिरिक्त वादी द्वारा अपने वादपत्र के पैरा क्रं. 09 में परिसीमा प्रारंभ होने के संबंध में स्पष्ट अभिवचन किया है कि प्रतिवादी क्रं३ के राजस्व अभिलेखों में दर्ज हो जाने के संबंध में जानकारी प्राप्त होने पर उसके द्वारा दिनांक 13.06.22 को माननीय उच्च न्यायालय में प्रकरण प्रस्तुत किया था एवं उक्ती दिनांक से ही निरंतर वादकारण उत्पान् हो रहा है। चूंकि वादी द्वारा वर्तमान वाद माननीय उच्च न्यायालय खंडपीठ इंदौर के द्वारा दी गयी अनुमति के आधार पर प्रस्तुत किया गया है जिससे परिसीमा पर विचार करते हुए भी वादी का वाद वर्तमान

परिदृश्य में परिसीमा अवधि बाह्य होना प्रतीत नहीं होता है साथ ही परिसीमा संबंधी आपत्ति के निराकरण हेतु न्यायन्यालय पृथक से वादप्रश्न विरचित कर उक्त आपत्ति का निराकरण करने हेतु सक्षम है।”

13] On perusal of the aforesaid order passed by this Court in W.P. No.11457 of 2022 as also the order dated 17.08.2022, passed by the trial Court leaves no manner of doubt, that the plaintiff has played fraud with the Court by misusing the order passed by this court by misinterpreting it to its own ulterior purpose, which cannot be countenanced under any circumstances and such practice is highly deprecated.

14] It is seen that scores of cases of diverse nature are routinely withdrawn by the parties for whatever the reasons, some with liberty, and some without any liberty. When a liberty is reserved to a party to take recourse of the appropriate alternate remedy, and this court is of the opinion that period of limitation might be an issue, in certain cases where no prejudice is likely to cause to any other party and the delay is negligible, it is directed to the appropriate authority to decide the case on merits, whereas, in other cases, where the delay is an issue affecting the rights of other parties, it is always directed that the time spent in prosecuting the writ petition be excluded from the period of limitation. In all those cases where a writ petition is simply withdrawn with liberty to take recourse of the appropriate remedy, it is intrinsic that the appropriate authority shall decide the matter in accordance with law, including the issue of limitation, as filing of a writ petition and simply withdrawing it can never tantamount to condonation of delay, and any other interpretation of such order would only amount to

fraud being played on the court for ulterior motives.

15] In view of the same, the learned judge of the trial court has also erred in interpreting the order passed by this court, and although the order passed by this Court on 13.06.2022 in W.P. No.11457 of 2022 was an innocuous order, not conferring any right or entitlement to any party, however, under the facts and circumstances of the case, the manner in which, the aforesaid order has been exploited by the plaintiff, the same is liable to be and is hereby modified to the extent that now the W.P. No.11457 of 2022 stands dismissed as withdrawn, however, without any liberty.

16] For the reasons assigned hereinabove, an exemplary **cost of Rs.100,000/- (Rupees One Lakh Only)** is also imposed on the **respondent Ram Gopal Kumawat** which shall be deposited in the account of President and Secretary H.C. Employees Union H.C. (Account No.63006406008, Branch Code No. 30528, IFSC No. SBIN0030528, CIF No. 73003108919) within a period of 30 days from the date of receipt of certified copy of this order and obtain a receipt. The acknowledgement be filed before the Registry failing which, the amount shall be recovered from the petitioner as a land revenue, in accordance with law.

17] With the aforesaid, review petition stands **disposed of**.

(SUBODH ABHYANKAR)
JUDGE

Pankaj