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**(1999) 04 BOM CK 0086**

**Bombay High Court (Goa Bench)**

**Case No:** Appeal From Order No. 85 of 1998

Shri Madhusudan Parshuram

APPELLANT

Vs

M/s. Devcon and another

RESPONDENT

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**Date of Decision:** April 1, 1999

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 34
- Specific Relief Act, 1963 - Section 15

**Citation:** (1999) 4 ALLMR 13 : (1999) 3 BomCR 732 : (2000) 1 MhLj 447

**Hon'ble Judges:** R.M.S. Khandeparkar, J

**Bench:** Single Bench

**Advocate:** M.S. Sonak, for the Appellant; M.S. Usgaonkar, S.A. and S.M. Usgaonkar, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

R.M.S. Khandeparkar, J.

This appeal arises from Order dated 18th April, 1998 passed in Civil Miscellaneous Application No. 276/97/A in Execution Case No. 62/96/A by the Civil Judge, Senior Division, Panaji.

2. The brief facts relevant for the decision are that the appellant filed an execution application being 62/96/A against the respondents praying for execution of a Sale Deed in terms of Decree dated 28th February, 1996 passed in Civil Suit No. 94/88/A. The Decree required the respondents to execute a Sale Deed of a flat bearing No. 103/ Type "C" admeasuring 80 sq. metres in area with proportionate undivided ownership rights in the Plot No. 10/A admeasuring 546 sq. metres comprised under Survey No. 9/6 of the village of Pehna de Franca. The appellant had also filed a copy of the draft Sale Deed along with the said application for execution praying for necessary directions in terms of Order 21, Rule 34 of Code of Civil Procedure. On receipt of notice of the said application, the respondents filed their reply to the

same along with a copy of the draft Sale Deed. After hearing both the parties, the Executing Court by its Order dated 17th September, 1997 allowed the said application for execution and directed the respondents to execute the Sale Deed in accordance with the draft Sale Deed submitted by the appellant. Though, the respondents filed review application of the said Order and by the impugned Order the Executing Court allowed the same and held that the said draft Sale Deed prepared and proposed by the respondents to be accepted as the final draft and, therefore, both the parties to execute the Sale Deed accordingly.

3. The impugned Order is sought to be assailed on the ground that the Executing Court erred in reviewing its Order dated 17th September, 1997 inasmuch as there was no error apparent on the face of record. It is the contention of the appellant that he was constrained to file the execution application along with the draft of the Sale Deed in terms of Order 21, Rule 34 since the respondents had failed to execute the Sale Deed. Though, the respondents filed their reply to the application for execution, in fact they did not file any objections as such to the said application. The Executing Court before approving the draft of the Sale Deed proposed by the appellant, had considered the reply filed by the respondents and had heard both the parties and thereafter had passed the said Order dated 17th September, 1997. According to the appellant, the whole purpose behind of filing of the review application is to delay the execution of the Sale Deed and the decree obtained by the appellant as long back in the year 1996. It is his further case that in terms of Order 21, Rule 34 of Code of Civil Procedure, it is for the decree holder to produce the draft of the Sale Deed when the judgment-debtor fails to comply with the decree. There is no question of accepting the draft Sale Deed prepared by the judgment-debtor, when the same was not in consonance with the award made rule of the Court on the basis of the agreement between the parties. In terms of agreement dated 20th April, 1986 between the parties, the appellant is entitled to get undivided share in the property in proportion of 80/546 and, therefore, the Executing Court ought to have dismissed the application for review.

4. The contentions of the appellant are sought to be countered on the ground that it was nobody's case that there was either neglect or refusal on the part of the judgment-debtor to comply with the decree and in fact, the respondents had submitted the draft of the Sale Deed much prior to the filing of the execution application by the appellant. According to the respondents, the appellant cannot claim any ownership rights in the property beyond what was agreed upon in terms of the agreement dated 20th April, 1986 and the share claimed by the appellant, is not in accordance with the terms of the said agreement. According to them, the agreement clearly provides that the Sale Deed was required to be drafted and prepared by the judgment-debtor.

5. Order 41, Rule 1 of CPC clearly provides that a review can be allowed on three specified grounds namely:-

- (i). Discovery of new and important matter or evidence, which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or the Order was made;
- (ii). Mistake or error apparent on the face of record, or
- (iii). For any other sufficient reason.

6. Bearing in mind the scope of Order 41, Rule 1 of Code of Civil Procedure, and considering the materials on record and the arguments by the Advocates, two questions arise for determination in the present Appeal. They are:-

(1); Whether there was error apparent on the face of record justifying review of the Order dated 17-9-1997, if not

(2). Whether there was sufficient reason for reviewing the Order dated 17-9-1997.

7. There is no dispute that the decree holder had filed the application for execution of Decree in terms of Order 21, Rule 34 of Code of Civil Procedure. Indeed, the application in para 10 clearly specifies that the mode of execution of the Decree to be in terms of Order 21, Rule 34 of Code of Civil Procedure. It is an undisputed fact that the decree-holder had filed a draft copy of the Sale Deed alongwith the application for execution of Decree. It is also not in dispute that under the agreement dated 20th April, 1986, the respondents had agreed to sell to the appellant a flat of 80 sq. metres at Greenhill Apartments, Alto Betim along with the corresponding ownership share in the area of the land in which the premises are situated. Since some disputes arose between the parties under the agreement relating to the additional costs payable towards the additional work, the matter was referred to the Arbitrator and the award passed by the Arbitrator in terms of the said agreement was made rule of the Court. It is also a matter of record that the Order dated 17th September, 1997 was passed after giving necessary opportunity to the respondents to file objections, if any, to the execution application and after hearing both the parties. The only controversy which was sought to be raised before the Executing Court in relation to the application for execution filed by the appellant was regarding the percentage of the ownership share in the land that was required to be conveyed along with the sale of the flat. This is apparent on the face of the Order dated 17th September, 1997, wherein it was held by the Executing Court that "the main bone of contention of the judgment-debtor is that the decree holder in the proposed Sale Deed intends to get more than what is required to be given to him". Moreover, after hearing the matter, the parties to the proceedings agreed to execute the Sale Deed as per the direction by the Executing Court and this is evident from the finding by the Executing Court in the said Order dated 17th September, 1997 wherein it was held that "both the Advocates stated that they have no objection to sign the Sale Deed" and thereafter, the Executing Court observed that "I make it clear that there should not be any difficulty in executing the Sale Deed on the proposed draft Sale Deed given by the Decree Holder".

8. The respondents, however, thereafter had a second thought about the matter and, therefore, filed a review application on the ground that there was an error apparent on the face of record. The error complained of was about the direction to accept the draft of Sale Deed given by the appellant. According to the respondents such a direction was not permissible under the law as well as the contract entered into by the parties, particularly in terms of Clause 13 thereof.

9. Justifying the review of the Order dated 17th September, 1997, Shri M. S. Usgaonkar, learned Senior Advocate appearing for the respondents submitted that there was no occasion for the executing Court to entertain the application under Order 21, Rule 34 of the CPC as there was neither refusal nor neglect to execute the Sale Deed in terms of the Decree by the respondents/Judgment-Debtor. According to the learned Advocate, the records disclose that the Judgment Debtor had in fact submitted his draft Sale Deed and had expressed willingness to execute the Sale Deed. Besides, in terms of Clause 13 of the agreement between the parties, it is for the respondents to prepare the draft of the Sale Deed.

10. Before considering the rival contentions in the matter, it would be worthwhile to refer to some of the decisions relating to the scope of the powers of the Court while dealing with an application for review of an Order.

11. In [S.P. Awate Vs. C.P. Fernandes and Another](#), it has been held that :-

"It is hardly necessary to state that the powers of review enjoyed by this Court are very limited powers and we have had occasions to point out that when a decision is challenged on the ground that there is an error apparent on the face of the record, the error contemplated is an error so manifest, so clear, that no Court would permit such an error to remain on the record. The error is not an error which could be demonstrated by a process of ratiocination, nor would it be correct to say that when two views on a question of law are possible and the Court has taken one view, the fact that the other view is a more acceptable view would render the first view an error apparent on the face of the record".

12. In [Raj Kumar Ramavtar Chourasia Vs. Mathew Charian Christian](#), the Division Bench of this Court held that "a decision erroneous in law is certainly no ground for ordering a review. If a Court had decided a point, but decided it erroneously, the error cannot be said to be one apparent on the face of the record or even analogous to it". It was further observed that a mistake of erroneous application of law is not same as error apparent on the face of the record. The decision in Rajkumar Ramavtar Chaurasia v. Mathew Charian Christian (supra) was arrived at after taking into consideration various earlier decisions of this Court and those of other High Courts as well as those of the Apex Court, It referred to the decision of the Calcutta High Court in the matter of [Dewan Singh and Another Vs. Golap Singh and Another](#), wherein it was held that "an erroneous view of the law on a debatable point or wrong exposition of the law or a wrong application of the law cannot be considered

to be a mistake or an error apparent on the face of the record". It referred to the decision of the Apex Court in the matter of [Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh](#), wherein it was held that "a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error". It referred to another decision of the Apex Court in the matter of [Northern India Caterers \(India\) Ltd. Vs. Lt. Governor of Delhi](#), wherein it was held that "an error apparent on the face of the record exists if of two or more views canvassed on the point, it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record". It also referred to a decision of Orissa High Court in the matter of [Utsaba Pradhan and Others Vs. Kandhuni Choudhury and Others](#), wherein it was held that "conclusion may be wrong but merely because it is wrong it cannot be reviewed and that a decision is erroneous in law is no ground for ordering its review".

13. Similar is the view expressed by the learned Single Judge of this Court in the matter of [Chandrakant Jagannath Manjrekar and Another Vs. Shripad Vaikunth Naik](#), wherein it was held that "there are also several precedents that only errors apparent on the face of the record are liable to be reviewed and such errors must stare one in the face where no elaborate arguments are necessary to pin-point those errors".

14. The contention of the learned Advocate for the respondents that the Executing Court had no occasion to entertain the application under Order 21, Rule 34, of the CPC as there was neither refusal nor neglect to execute the Sale Deed in terms of the Order is devoid of substance. First of all, the review was not sought on any such ground. Secondly, the said Rule clearly empowers the Court to direct the execution of the Sale deed in terms of the draft approved by the Court. Once it is found to be an undisputed fact that the respondents did not agree to execute the Sale Deed in terms of the Decree which was issued in accordance with the agreement between the parties, and the said agreement having clearly provided for proportionate share of ownership in the land to the appellant, and the proportionate share was 80/546 considering the total super built area of the entire building and the area of land as disclosed in the agreement, and yet the respondents wanted to convey the ownership in different proportion, that is less than agreed upon and decreed by the Court, it was but clear that the respondents had refused to execute the Deed in terms of the Decree. Therefore, the Executing Court was clearly empowered in terms of the provisions under Order 21, Rule 34 of the Code of Civil Procedure, to direct the respondents to execute the Deed in accordance with the draft submitted by the appellant. The draft was in accordance with the Decree which in turn was based on the agreement between the parties. Certainly the provisions of Clause 13 of the agreement cannot substitute the provisions contained in Rule 34 of Order 21 of Code of Civil Procedure.

15. In the case in hand, it is apparent that the review was sought only on one ground i.e. it was impermissible under the law to direct the respondents to execute the Sale Deed- as per the draft submitted by the appellant since the same direction was contrary to the provisions in Clause 13 of the agreement between the parties.

16. The records clearly disclose that the respondents not only neglected but refused to execute the Sale Deed in terms of the decree. The decree was in favour of the appellant in terms of the agreement arrived at between the parties. The agreement was for purchase of the flat admeasuring 80 sq. metres in area with the proportionate undivided ownership rights in the plot admeasuring 546 Sq. metres in area. The agreement on the face of it discloses that the total super built up area was mentioned 532 sq. metres including 80 sq. metres of the flat which was agreed to be sold to the appellant. In spite of the same, the respondents wanted to execute a Sale Deed with a different proportion of ownership rights in the plot in favour of the appellant and admittedly, such proportion was less than what was agreed between under the said agreement. That was case of refusal to execute the Deed in accordance with the Decree and such a view disclosed from the Order dated 17th September, 1997 is a possible view and it cannot be an error apparent on the face of record even though another view might have been possible. The powers of review cannot be exercised to repair the verdict once given unless the error apparent is pointed out. Neither the Order dated 17th September, 1997 was against the law nor it proceeded on erroneous assumption of material facts. There was neither misconception of facts or law nor there was any omission to consider any material on record while delivering the Order dated 17th September, 1997. There was absolutely no error of whatsoever nature in the Order dated 17th September, 1997 directing the respondents to execute the Sale Deed in accordance with the draft submitted by the appellant.

17. The points for determination, therefore, are to be answered in the negative and it is to be held that there was neither any error on the face of record justifying the review of the Order dated 17th September, 1997 nor there was sufficient reason for reviewing the said Order and hence, the impugned Order cannot be sustained.

18. In the result, the Appeal succeeds and the impugned Order is hereby quashed and set aside. Needless to say that in the circumstances, the Order dated 17th September, 1997 stands valid for all purposes. The time thereunder to execute the Sale Deed by the parties is extended by six weeks from today. The respondents to pay costs of Rs. 1,500/- to the appellant.

19. Appeal succeed.