



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION (L) NO.39242 OF 2024
IN
WRIT PETITION NO.1146 OF 2023

Supreme Construction & Developers Pvt. Ltd. ...Petitioner

Versus

State of Maharashtra & Anr. ...Respondents

Mr Sunil Kumar Mukhi a/w Mr Mohammad M Abdi i/b. Mr Hrushikesh Shinde for Petitioner.

Mrs Jyoti Chavan, Addl. G. P a/w Mrs Nazia Sheikh, AGP for Respondents.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

DATED : 3 February 2025

PC.:- (Per M. S. Sonak, J.)

1. Heard Mr. Mukhi, learned counsel for the Review Petitioner and Mrs. Chavan, learned Additional Government Pleader for the State.
2. This petition seeks a review of our order dated 28 November 2024, by which we declined to entertain the petition and relegated the Petitioner to avail the alternate remedy of an appeal by fulfilling the pre-deposit conditions. In paragraph 14, we recorded the statement of Mr. Mukhi, learned counsel for the Petitioner, that the Petitioner will institute an appeal within 30 days from today. After recording this statement, we directed the Appellate Authority to consider the appeal on merits without referring to the limitation issue.
3. Now, this review application has been filed on the grounds set out in paragraphs 4A to 4D of the review petition.

4. At the outset, the review petition must be supported by the Advocates Certificate provided under Chapter IV Rule 23 of the Bombay High Court Rules. The format of the certificate is provided under the Rules and the same reads as follows:-

“23

(i)

(ii)

(iii) **Certificate of Advocate for ground of review** – Every application for review shall, if filed by an Advocate, bear a Certificate under his hand to the following effect :-

CERTIFICATE

I, Advocate for the abovementioned Review Petitioner herein, do hereby certify that, in my judgment, ground (or if there be several, such of the grounds) of review in the Petition presented by me on behalf of the said is a good ground of review.

Dated this day of 19

(Signature)

Advocate for ”

5. In this case, the review is filed by the Advocate or through the Advocate. Therefore, the certificate in the above-prescribed form had to accompany the review petition. This review petition is accompanied by an Advocate’s certificate on page 148 of the paper book and the same reads as follows:-

“We, Mohammad Mehdi Abdi and Hrushikesh Shinde Advocates for the Petitioners herein, do hereby certify and state that the issues involved in the Present Writ Petition is to be entertained by the Divisional Bench of this Hon’ble Court because this Petition does not challenge any judicial order as contemplated under the amended Rule 636(1) (b) of the Bombay High Court, O. S. Rules. Therefore the said Petition is required to be placed before the Divisional Bench.”

6. From the above, it is evident that the certificate is not in terms of the certificate contemplated by Rule 23(iii) of Chapter IV of the Bombay High Court Rules. Such a certificate is required so that the Advocate who files the review petition must take responsibility for the grounds raised therein.

7. Even if the above defect is ignored, we are satisfied that no case is made out for the exercise of review jurisdiction. The Petitioner has instituted this review petition to once again argue the matter. Mr Mukhi did precisely the same.

8. The grounds of review now suggest that the statement of the Advocate was conditional to our waiving pre-deposit of 10%. It is further argued that CBIC Circulars are binding on the appellate authorities. In terms of these Circulars, the requirement of pre-deposit could not have been insisted for the class of assesseees to which the Petitioner belongs. The learned counsel for the Petitioner has relied upon *UCO Bank vs. Commissioner of Income Tax*¹, *Red Chilli International Sales vs. Income Tax Officer & Anr.*², *M/s. Tecnimont Pvt. Ltd. vs. State of Punjab*³ and *Commissioner of Income Tax vs. Gem India Manufacturing Co.*⁴ in support of the review petition.

9. None of the decisions apply. In any event, based upon the same, no case is made out for the exercise of review jurisdiction. The contention that the Petitioner is a loss-making unit and, therefore, there ought to be no insistence for 10% pre-deposit is entirely misconceived. No case is made out for waiver, even assuming such waiver was permissible. The extraordinary jurisdiction cannot be invoked only to avoid pre-deposit requirements. All these contentions were duly considered.

10. The contentions now sought to be advanced cannot be entertained in this review petition. Even considering such contentions, no case is made out for the exercise of review jurisdiction. The review jurisdiction is minimal.

1 (1999) 237 ITR 889 (SC)

2 CWP No.10073 of 2022 dtd. 2 June 2022

3 (2021) 12 SCC 477

4 (2001) 10 SCC 733

11. For all the above reasons, we dismiss this petition with token costs of Rs.10,000/- favouring the Tata Memorial Hospital at Mumbai with Account No.1002449683, IFSC Code : CBIN0284241, Central Bank of India, Tata Memorial Hospital Branch. The Petitioner should deposit the cost within four weeks from the date of uploading of the present order and file a compliance affidavit of having paid this cost.

12. As we concluded the dictation of this order, Mr. Mukhi, learned counsel for the Petitioner, complained that he had not been elaborately heard. We record this submission, though we disagree with it. We also politely requested him to allow us to proceed with the other matters from the board, to which he said that his matter was important because of the high stakes involved. After expressing his disappointment for some time, Mr Mukhi allowed the board [cause list] to proceed.

(Jitendra S. Jain, J.)

(M. S. Sonak, J.)