



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.5791 OF 2026
IN
FIRST APPEAL NO.2638 OF 2025**

City Corporation Limited,
City Chambers 917/19A,
F.C. Road, Pune 411004
Through its Managing Director -
Mr. Aniruddha Pradyumna Deshpande

..Applicant

Vs.

1. Mr. Deepak Shivram Pathare,
Age: Adult, Occupation: Agr.
Residing at Karegaon Tal. Shriramour
(Original Appellant in
First Appeal No. 2638 of 2025)
2. Mr. Vijay Shivram Pathare,
Age: Adult, Occupation: Agri.,
Residing at Karegaon, Tal. Shriramour,
Dist. Ahhilyanagar.
(Original Respondent in
First Appeal No. 2638 of 2025)

Respondents

Mr.G.K.Naik-Thigale, Advocate h/f. Mr.Paresh B. Patil (Borse), Advocate
for applicant

Mr.Niteen V. Gaware – Patil, Advocate h/f. Mr.Sanjay N. Gaikwad,
Advocate for respondent no.2

**CORAM : AJIT B. KADETHANKAR, J.
DATE : JULY 17, 2026**

ORDER :-

Heard Mr.G.K.Naik-Thigale, learned counsel i/b. Mr.Paresh B. Patil (Borse), learned counsel for the applicants. Mr.N.V.Gaware-Patil, learned counsel, *suo motu* appears for respondent no.2. It is informed that respondent no.1 is served privately.

2. This is an application for review of the order dated 08.10.2025 passed by this court in First Appeal No.2638 of 2025.

3. Probate Application No.1 of 2018 filed by the present respondent no.2 - Vijay was allowed by learned Civil Judge, Senior Division, Shrirampur. Present respondent no.1 - Dipak filed Probate Application No.2 of 2019 thereby challenging the judgment and order passed in Probate Application No.1 of 2018 and for grant of probate in the Probate Application No.2 of 2019. The said proceedings came to be turned down by a reasoned judgment and order dated 10.11.2021 passed by learned Civil Judge Senior Division, Shrirampur in Probate Application No.2 of 2019.

4. The said judgment and order was taken up in challenge before this court under Section 384 of the Indian Succession Act, 1925 by filing First Appeal No.2638 of 2025. The appeal was filed beyond delay. After hearing both the parties and recording consent

of the respondents therein, the application was allowed and the delay was condoned. After hearing both the parties on merit, this court vide judgment and order dated 08.10.2025, dismissed the First Appeal on merit.

5. It is informed that the Original Applicant, i.e. present respondent no.1 challenged the dismissal of the First Appeal before the Hon'ble Supreme Court vide Petition(s) for Special Leave to Appeal (C) No.32383/2025. The Hon'ble Supreme Court did not find the case worth to grant leave. As such, the S.L.P. came to be dismissed. The original applicant then filed an application before the Hon'ble Supreme Court seeking review of the order rejecting the S.L.P. Said application also came to be rejected by the Hon'ble Supreme Court. On this backdrop, present application is filed seeking review of the judgment and order dated 08.10.2025, passed in First Appeal No.2638 of 2025.

6. Mr.Thigale, learned counsel for the applicant, would submit that the applicant is a third party to the proceedings, however, the applicant has valuable interest in the immovable properties for which probate proceedings were initiated. He would submit that grant of probate in Probate Application No.1 of 2018 as also rejection of Probate Application No.2 of 2019 caused prejudice

to the civil rights of the present applicant. He would submit that for that purpose only and to demonstrate that suppressing the applicant's civil rights, the proceedings were taken up before the trial court as well as this court and before the Hon'ble Supreme Court too, present review application is preferred. Mr.Thigale would submit that the applicant is conscious about his civil rights and apprehend that the orders passed in the proceedings which were at the behest of the respondents would come adversely in the applicant's way to establish its civil rights. He would submit that the present application is filed, therefore, to bring a fact on record that the probate proceedings and the First Appeal were filed by the present respondents in collusion with each other. With this, Mr.Thigale, learned counsel for the applicant, would urge for allowing the application and to review the judgment and order dated 08.10.2025 , passed in First Appeal No.2638 of 2025.

7. Mr.Nitin Gavare - Patil has strong objection to these submissions. He objected that no case for review is set up by the applicant. He objects any collusion between the respondents. His further contention is that the First Appeal is dismissed by this Court. That, instead of challenging the Judgment and Order in original proceedings, the applicant has chosen incorrect way to file review.

He further submits that even this application cannot be treated as an application to recall an earlier judgment or order. He relies upon the decision of the Apex Court in the case of **Ajay Kumar Jain Vs. State of Uttar Pradesh and another, 2024 SCC OnLine SC 3677.**

8. Heard both the sides. A review application has to be decided within the parameters of Order XLVII of the Code of Civil Procedure. The text of Order XLVII reads thus:-

1. Application for review of judgment.—

(1) Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the

pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.

2. To whom applications for review may be made.—Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956) s. 14.

3. Form of applications for review.—The provisions as to the form of preferring appeals shall apply, mutatis mutandis, to applications for review.

4. Application where rejected.—

(1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

(2) **Application where granted.**—Where the Court is of opinion that the application for review should be granted, it shall grant the same: Provided that—

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

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 continued attached to the Court at the time when the application for a review is presented, and is not or 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.

6. Application where rejected.—

(1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. Order of rejection not appealable. Objections to order granting application.—

(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

8. Registry of application granted, and order for re-hearings.—When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

9. Bar of certain application.—No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

9. Looking to the contentions raised by the applicant in this proceedings, I do not find that the application fits in any of the parameters as set out in Order XLVII of C.P.C. So far as the civil rights of the applicant are concerned, the law of probate and the ambit of probate proceedings is well settled by the Apex Court in **Ishwardeo Narain Singh Vs. Kamta Devi and others, (1953)1 SCC 295** and by this court in **Ramchandra Hande Vs. Vithalrao Hande and ors., 2011 (4) ALL MR 189**. Its trite law that probate proceedings do not confer title nor decide legality of title, but it is confined only to the genuineness of the instrument and correctness of its execution.

10. In view of the above, I do not find any case to cause interference. The application does not meet even a single qualification laid down in Order XLVII of Civil Procedure Code 1908 to seek review, and the same is absolutely misconceived. The alternate request to recall the judgment and order passed in First Appeal do not stand on any legal footing and the same is ill-founded. Hence, the application stands dismissed.

[AJIT B. KADETHANKAR, J.]

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