

FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**REVIEW APPLIATION ST.NO.25723 OF 2012**
IN
CIVIL APPLICATION NO.959 OF 1991
IN
SECOND APPEAL NO.552 OP 1989

(Haridas S/o. Krishna Lomate V/s Krishana S/o. Lala Lomate (Died) & others)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders CORAM : A.V. NIRGUDE, J. DATED : 21.01.2015
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Mr.A.N.Nagargoje, Advocate h/f Mr. Sudhir K. Chavan, Advocate for applicant.
Mr.S.S.Chaudhari, Advocate for respondent No.4.

1. Heard.

2. The applicant seeks review of order dated 14.10.2011 thereby directing the appellant to make one Prakash as respondent in view of findings recorded by learned Civil Judge, Junior Division, Osmanabad. When the appeal was argued in the year 2009 my learned predecessor realized that there was an undecided question of fact

between the parties. One Prakash was claiming to be legal representative of one Yamunabai on the basis of a will. This Court directed to Civil Judge, Junior Division, Osmanabad to decide the issue as to whether the will is genuine and lawful. The issue was referred to the Lower Court but as expected by Rule 470 of Civil Manual, my learned Brother did not direct the District Judge to certify the correctness of such finding. Therefore, the learned District Judge, Osmanabad had no occasion to verify the correctness of such finding. On the basis of findings recorded by the Trial Court, I passed the impugned order dated 14.10.2011. Because of this order the appellant lost an opportunity to challenge the findings recorded on the will before learned District Judge.

3. In order to give such opportunity to the appellant and since such direction was initially not given, I am passing following order.

4. The impugned order dated 14.10.2011 is hereby recalled. The learned District Judge, Osmanabad is directed to certify the correctness of the findings recorded by the learned Civil Judge, Junior Division, Osmanabad in order dated 01.11.2010, passed below Exh.188 in R.C.S. No.85 of 1983 and return his findings to this Court within two months from today.

5. The civil application is accordingly allowed and disposed of.

[A.V. NIRGUDE, J.]