

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 1041 OF 2013
IN
APPEAL NO. 25 OF 2011**

Rajendra Vinayak Mehta and Anr. ..Appellants

Vs.

Mrs. Veena Jaswant Shah and Ors. ..Respondents

....

Ms. Smita Patel, C.A. For Appellants.

Mr. B.K. Barve a/w Mr. Sandeep Barve i/b B.K. Barve and Co. for Respondents.

....

**CORAM : MOHIT S. SHAH, C.J. &
M.S. SANKLECHA, J.
DATED : 18 FEBRUARY 2015**

P.C.:

1. Though appellant Mr. Rajendra Vinayak Mehta has not filed any review petition, affidavits dated 21 October 2013 and 22 November 2013 have been filed by the appellant praying for review/modification/reconsideration/clarification/correction of our order dated 30 September 2013.

2. By said order dated 30 September 2013, we had rejected prayer (a) in this Notice of Motion. For considering rest of the prayers, the Notice of Motion was to be placed before the Division Bench headed

by the Hon'ble Justice A.S. Oka hearing Appeal No. 25/2011. The said Division Bench has passed an order dated 5 January 2015 indicating that the Constituted Attorney of the appellant wanted the Appeal No. 25/2011 and all the pending Notices of Motion in the appeal be heard by this Bench.

3. Having heard Ms. Smita Patel, Constituted Attorney of Mr. Rajendra Vinayak Mehta, we do not find any ground for review/modification/reconsideration/clarification/ correction of our order dated 30 September 2013 is made out, except that the order dated 30 September 2013 had only rejected prayer clause (a) of the Notice of Motion, but we find that prayer clauses (b), (c) and (d) thereof also do not survive in view of the following observations in our order dated 30 September 2013:

“14. The controversy about uploading of the order is now a closed chapter. The applicant Mr. Rajendra Vinayak Mehta must now move on and either he may argue Appeal No. 25 of 2011 through his Constituted Attorney or he may proceed to oppose the revocation petition i.e. Misc. Petition (Testamentary) No. 54 of 2010 himself or through an advocate.

If Mr. Rajendra Vinayak Mehta insists that only his Constituted Attorney should argue to oppose the revocation petition, he will have to await the outcome of Appeal No. 25 of 2011 pending before the Division Bench headed by Hon'ble Mr. Justice Abhay Oka”

4. The Notice of Motion contains following prayers:

“(a) That in pursuance to the orders dated 30.03.2012, 10.05.2012, 12.12.2012, 27.12.2012, 01.02.2012 and 05.04.2013 passed in Notice of Motion No. 389/2011 and 2623/2012 in Appeal No. 25/2011 and 311/2012 by the Appeal Court, This Hon'ble Court in the interest of Justice, Equity, Fair Play and to uphold the Dignity of the Judicial Institution, be pleased to convert these proceedings into Suo-Moto Writ Peittion, as per the order dated 10.05.2012 of this Appeal Court, which has recorded, “..such averments are in the nature of a petition and it cannot be treated as a simple ground in appeal memo” as well subsequent orders passed by this Appeal Court.

(b) That this Hon'ble Appeal Court be pleased to declare that the order dated 2nd September 2010, running into 12 pages is a non-existing order and be pleased to pass appropriate orders directing the Original Side Registry and the Appellate Side Registry to get the said order dated 2nd September 2010, running 12 pages pages, removed and deleted from the website of The Bombay High Court, since the original signed order of the Learned Single Judge was not on record on 11th October 2010 and that an unsigned order was uploaded in the computer.

(c) That this Hon'ble Court be pleased to pass an order that the order dated 2nd September 2010, running into 12 pages shall henceforth not be used in any co-lateral proceedings and/or produced and/or relied upon by any party and by any advocate/s in any Courts in India.

(d) That in the interest of Natural Justice, Equity and Fair Play, and in order to justify that the original signed order dated 2nd September 2010 of the Learned Single Judge was not on record as on 11th October 2010, and that an unsigned order was uploaded in the Computer, this Hon'ble Appeal Court be pleased to allow Ms. Smita Patel in her individual capacity and as the constituted attorney for the Appellants to conduct cross-examination

and the statements of the following Court Officers of the Bombay High Court be recorded.

(i) The learned Registrar Judicial – II Mr. D.R. Shirasao – the head and in-charge of the Decree/Certified Copy Department who has submitted the report on 09.01.2013 in pursuance to the directions given by this Appeal Court.

(ii) The then learned Assistant Registrar Smt. V.S. Bhosale of the Decree/Certified Copy Department.

(iii) The learned Registrar (O.S.)/The Prothonotary and Senior Master, Mr. D.V. Sawant.

(iv) The then learned Registrar (O.S.)/The Prothonotary and Senior Master, Mrs. A. Rodriques.

(v) The learned Section Officer, Mr. Chachad of the Original Side Decree/Certified Copy Department.”

5. Hence prayer clauses (b), (c) and (d) of the Notice of Motion also stand rejected. Thus Notice of Motion No. 1041/2013 is dismissed in its entirety and is not required to be placed anymore before the Division Bench.

6. In view of the above, Appeal No. 25/2011 alongwith the pending Notices of Motion therein be placed before the Division Bench headed by Hon'ble Mr. Justice A.S. Oka for hearing.

CHIEF JUSTICE

[M.S. SANKLECHA, J.]