

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

**REVIEW APPLICATION (CIVIL) NO. 110 OF 2016
IN
WP/6555/2015**

DAYARAM SAKHARAM PAWAR
VERSUS
PRAFULLA TRAMBAK BRAHMANE AND OTHERS

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Advocate for Applicant : Mr S P Brahme
Advocate for Respondent 1 : Mr A S Abhyankar h/f S.V
Natu

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**CORAM : V.K. JADHAV, J.
Dated: September 28, 2016**

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PER COURT :-

1. The applicant is seeking review of the Judgment and Order dated 17.02.2016 passed by this Court in Writ Petition No.6555 of 2015.

2. The learned counsel for the petitioner submits that, during the course of arguments, the petitioner cited the judgments as detailed in paragraph no.6 of the present application and also the counsel for the respondent places his reliance on seven judgments as detailed in paragraph No.7 of the present application. In fact, those citations were not referred and considered while disposing off the said writ petition.

3. The learned counsel submits that, respondents No.1 and 2 have failed to prove jurisdictional facts in their application Exh.60 to invoke the powers of enquiry under Order 21 Rule 97 of the Civil Procedure Code and in view of section 15 of Hindu Succession Act, present respondents no.1 and 2 cannot be preferred as heirs of Sojyabai over the heirship claim of the petitioner. Learned counsel submits that it is a mistake or error apparent on the face of the record.

4. The learned counsel for the petitioner in order to substantiate his contention places his reliance on a judgment in case of Board of Control for Cricket, India and another Vs. Netaji Cricket Club and others reported AIR 2005 Supreme Court 592.

5. The learned counsel for respondent submits that while considering the scope of the review jurisdiction re-hearing of the matter for detecting an error in the earlier decision and then correcting the same do not fall within the ambit of review jurisdiction. Review jurisdiction cannot be used as an Appellate jurisdiction.

6. The learned counsel for the respondent in order to substantiate his contentions places reliance on the following three cases.

- I] Parsion Devi and others Vs. Sumitri Devi and others reported (1997) 8 Supreme Court Cases 715.
- II] Akhilesh Yadav Vs. Vishwanath Chaturvedi and others. Reported in 2013 SAR (civil) 216.
- III] Rajkumar Ramavtar Chourasia Vs. Mathew Charian Christian reported in [1984 Mh.L.J. 898].

7. In a case Board of Control for Cricket, India (supra) relied upon by the learned counsel for the petitioner, in paragraph No.18 and 19 of the Judgment the Supreme Court has made following observations :-

88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

89. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".

8. In the instant case, inadvertently, the cases cited and relied upon by the parties kept in part 'B' of file and those are not placed before the Court at the time of dictating the Judgment. Consequently, submissions with regard to those citations and those citations were not considered by the Court while disposing off the writ petition. Furthermore, it is a matter of record that so

far as application Exh.60 is concerned, there are no pleadings about jurisdictional facts in the said application for invoking the powers of inquiry under Order 21 Rule 97 of the Code of Civil Procedure. Thus, there is a mistake/error apparent on record while disposing off the Writ Petition No.6555/2015.

9. In view of this, Review Application is allowed. The order dated 17.02.2016 passed in Writ Petition No.6555/2015 stands recalled. Writ Petition No.6555/2015 is restored to its original position. Writ Petition shall be placed before the Appropriate Court for re-hearing. Review application accordingly disposed off.

sd/-

(V.K. JADHAV, J.)

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aaa/-