

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION STAMP NO. 19824 OF 2016
IN
CIVIL APPLICATION NO. 4884 OF 2015
IN
SECOND APPEAL NO. 417 OF 2006

KASHIBAI W/O WAMANRAO DHONDDEO
(DIED THROUGH L.RS.) ... APPLICANT

VERSUS

SATUCHARYA APPACHARYA KASHIKAR
DIED THROUGH L.Rs ... RESPONDENT

CORAM: VIJAY S.KULKARNI
REGISTRAR (JUDL)

DATED: 29/06/2016

1. Not on board. Taken on board.
2. Heard Shri. S.M.Vibhute, learned Advocate for the original respondent/present applicant and Shri.D.K. Mane, learned Advocate for the original appellant/present respondent.
3. The present civil application came to be filed by the original respondent/applicant with prayers that :-

A) This civil application may kindly be allowed.

B) The order dated 06.05.2015 passed by this Hon'ble Registrar (J) of this Hon'ble Court in Civil Application NO.4884/2015 may kindly be recalled and Civil Application NO.4884/2015 filed by the present respondent no.1/1 may kindly be placed before the Hon'ble Court for

hearing.

C) Any other suitable and equitable relief may kindly be granted in favour of the applicant.

The main prayer in this application is for recalling order dated 06.05.2015 passed by this Court in C.A. No.4884/2015.

4. It has been mainly contended by the learned Advocate for the present applicant that there is a contest between the litigating parties and therefore, C.A.No.4884/2015 must not have been heard and allowed by this Court. As against this, the learned Advocate for the present respondent has resisted the contentions of the applicant that at the time of passing order dated 06.05.2015 there was nothing on record to show that there was a contest between the parties and therefore, this court has rightly observed and passed order dated 06.05.2015. It has been pointed out by the learned Advocate for respondent that when Civil Application No.4884/2015 was filed by the applicant, it was filed within limitation and there was no contest to resist the aforesaid application and therefore, there is no reason to reverse or recall the order passed by this Court. It is argued that there is no provision in High Court Appellate Side Rules to recall its own order passed by this Court dated 06.05.2015.

5. According to the learned Advocate for the applicant, respondent by suppressing the fact that there is a contest between the parties and by filing the application for bringing L.Rs. on the basis of will, obtained order of bringing L.Rs. on record. Therefore, it

must be recalled by this Court.

6. On going through the record, it appears that C.A.NO.4884/2015 came to be filed on 18.06.2014. The sole appellant reported to be dead on 20.03.2014. There was office objection that V.P. is not filed for L.Rs. of appellant sole. This office objection was not removed by the appellant and therefore, the registration of C.A. St. No.14858/2014 came to be refused vide order dated 19.11.2014. It is seen from the record that the applicants/appellant challenged the order dated 19.11.2014 before the Hon'ble Court by filing C.A.No.3591/2015. Vide order dated 19.03.2015, C.A.NO.3591/2015 was heard and disposed of by the Hon'ble Court by recalling order of this Court dated 19.11.2014. Thereafter matter was notified before this Court. It was listed for hearing before this Court on 06.05.2015. There was office endorsement that the applicant prays that to bring himself as L.Rs. of deceased sole appellant as per prayer clause "A".

- (i) memo sworn
- (ii) V.P. filed for L.R.
- (iii) C.A. is in time
- (iv) S.A. is admitted.

7. It is apparent from the record that on 06.05.2015 when the matter was called out, none was present on behalf of applicant and respondent. However, at this juncture, it is submitted by Shri.D.K.Mane, learned Advocate that he was present before this Court on 06.05.2016 and therefore, the order came to be passed by this Court. It is clear that the civil application filed for bringing L.Rs. was within a period of limitation. There was nothing on record and pointed out by either of

the parties that there was a contest between the parties. Therefore, this Court has passed order dated 06.05.2015 and allowed C.A.No.4884/2015.

8. In the facts and circumstances, it is needless to mention here that parties are not precluded from establishing their right as legal heirs by independent inquiry.

9. In view of the above observations, I am of the view that there is no provision in High Court Appellate Side Rules to recall order dated 06.05.2015. With these observations, C.A. Stamp No.19824/2016 stands disposed of.

REGISTRAR (JUDL)