

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

**REVIEW APPLICATION (CIVIL) NO. 155 OF 2016
IN
WRIT PETITION NO.2596 OF 2015**

SHANKARLALS RATANLAL JAISWAL (DIED) THROUGH
LRS. MATHURABAI AND OTHERS
VERSUS
BABURAO MAINAJI PHUTKE AND ANOTHER

...

Advocate for Applicants : Mr K J Suryawanshi
Advocate for Respondent no.1 : Mr R.T. Nagargoje

...

CORAM : V.K. JADHAV, J.
Dated: December 05, 2016

...

PER COURT :-

1. The applicants are seeking review of the judgment and order dated 17.2.2016 passed by this Court in Writ Petition No.2596/2015.

2. The learned counsel for the applicants submits that, being aggrieved by the order passed by this Court as aforesaid, the applicants have filed Special Leave to Appeal No.14810/2016 before the Apex Court and the same is disposed off on 1.7.2016 observing that the petitioner to seek review of the order before the High Court. Learned Counsel submits that, this Court while deciding aforesaid writ petition no.2596/2015 observed

that, the delay caused in filing the restoration application is already condoned in W.P No.1841/2014, which is factually incorrect. Learned counsel submits that, writ petition no.1841/2014 was preferred against the common order dated 18.2.2014 passed below Exh.5 and 18 by the learned Additional District Judge-1, Gangakhed. Said writ petition no.1841/2014 was not preferred against the order passed on delay condonation application i.e. M.A.R.J.I. No.33/2015. Respondent no.1 had filed applications Exh.5 and Exh.18 in M.A. No.36/2013 praying therein that, the Execution Proceedings of the R.D. No.55/2010 be stayed till the disposal of the appeal, and since the said applications came to be rejected by the common order dated 18.2.2014 by the learned Additional District Judge, Gangakhed, Writ Petition no.1841/2014 was preferred. Learned counsel submits that, there was no any occasion for this court to condone the delay. The subject matter of the writ petition no.1841/2014 was not in respect of the condonation of delay in filing the restoration application and subject matter of the said writ petition was whether execution proceedings are to

be stayed or not pending the application for condonation of delay i.e. M.A. No.33/2015. This Court in writ petition no.1841/2014 has not condoned the delay caused in filing the restoration application. This Court while disposing off writ petition no.1841/2014 passed an order that execution proceeding remained stayed till the disposal of the proceedings for restoration, it does not mean that, delay is automatically condoned in filing restoration application.

3. Learned counsel for respondent no.1 submits that, while deciding writ petition no.2596/2015 considering the scope of 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. Learned counsel submits that, against the order passed by the lower appellate Court below Exh.5 and 18, respondents preferred writ petition no.1841/2014 before this Court and after hearing the parties, this court by awarding costs of Rs.7,500/- directed the lower appellate Court to proceed

with restoration proceedings as early as possible and within a period of three months and in the event restoration proceeding succeed R.C.A No.13/2005 may be disposed off within a further period of six months. In view of the said order, both the parties appeared before the lower appellate court in M.A.R.J.I. No.36/2013. It has brought to the notice of the Court that, application for condonation of delay is decided in writ petition no.1841/2014 with a direction to decide the application for restoration of appeal. Even then, the District Judge-1, Gangakhed dismissed the application for condonation of delay. This Court while deciding writ petition No.2596/2015 has rightly directed the lower appellate Court to proceed with the restoration proceeding as early as possible. There is no substance in the review application and the same is thus liable to be dismissed.

4. It is a matter of record that, Writ Petition No.1841/2014 preferred by present respondent no.1 is against the common order passed by the lower appellate Court below exh.5 and 18. Said applications came to be filed for staying the execution proceeding of R.D.

No.55/2000 till the disposal of the appeal. By common order dated 18.2.2014 the lower appellate Court has rejected the said applications. In writ petition No.1841/2014 by order dated 5.3.2014 this Court has quashed and set aside the common order passed by the learned District Judge-1, Gangakhed below Exh.5 and 18 in M.A.R.J.E No.36/2013 on costs of Rs.7,500/- and that deposit of the said costs would be a condition precedent for revival of the applications Exh.5 and 18. This Court while disposing of the said writ petition no.1841/2014 further directed that restoration proceedings be proceeded by the lower appellate court as early as possible preferably within a period of three months from the date of that order. It is clear that said restoration proceedings includes an application for condonation of delay caused in preferring the restoration petition. Thus, there is an error apparent on the face of the record while disposing off the Writ Petition No.2596/2015. Hence, following order.

ORDER

- I. Review Application is hereby allowed.

- II. The judgment and order dated 17.02.2016 passed in Writ Petition No.2596 of 2015 stands recalled.
- III. Writ petition is restored to its original position.
- IV. Writ Petition No.2596 of 2015 shall be placed before the appropriate Court for hearing.
- V. Review Application accordingly disposed off.

(V.K. JADHAV, J.)

...

aaa/-