

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

CIVIL APPLICATION NO. 78 OF 2016

in

REVIEW PETITION (ST.) NO. 11921 OF 2014

in

WRIT PETITION NO. 6946 OF 2012

Chanchalaben Daulatrai Kothari & Anr. ... Applicants.

V/s.

Mohammed Safiq (Since deceased)

Legal Heirs & Representatives

1. Mohammed Idriq and Ors. ... Respondents.

Mr. Vivek Walawalkar i/b. Sameer Bhalekar and Vidita Bhalekar for
the Applicants and for the Petitioners in RP.

None for the Respondents.

CORAM : N.M. Jamdar, J.

14 October, 2016.

Oral Order :-

By this Civil Application the condonation of delay in filing the Review Petition is sought. The application is taken out in the Review Petition. Both the applications for condonation of delay and review are taken up for consideration together.

2. The order under review is dated 27 September 2013 passed by R.Y. Ganoo, J. The order reads thus :-

“ After hearing learned Advocate Mr. Bhalekar appearing on behalf of the petitioners, learned advocate Mr. Bhalekar states that he will file an application in the executing Court for withdrawal of Execution Application No. 247 of 2011 as the said application was defective. He further seeks liberty to file a fresh application for execution. The petitioners are permitted to approach the trial Court for withdrawal of Execution Application No. 247 of 2011 and seek further liberty to apply for a fresh application for execution.

2. With the aforesaid liberty, the petition stands disposed of with no order as to costs. If the petitioners' request is rejected by the executing Court, the petitioners will be free to challenge the said order. There shall be no order as to costs.

The learned Judge recorded a statement made by the Advocate for the Petitioner that he will make an application for withdrawal of the execution proceedings with a liberty to file fresh application for execution and the Petitioners were permitted to approach the Trial Court accordingly.

3. The orders of the Court, after they are signed, are uploaded on the website of the Court and are available for all litigants to see. Best course of action would have been to move the concerned learned Judge immediately for clarification. The Civil

Application was filed and that came up in regular course before R.M. Savant, J. Thereafter, the Civil Application was withdrawn and the present Review Petition has been filed. In the Review Petition there is no averment of any attempt being made to move the same learned Judge who had passed the order on 27 September 2013.

4. Rules framed by this Court postulates that as far as possible, unless the learned Judge is not available, the Review Petition should be placed before the same learned Judge. Since the Petitioner now wants to re-open and resile himself from the statement, the least what was expected to state as to why the Applicant could not move the same learned Judge.

5. The learned Counsel for the Applicant submitted that there is no question of withdrawal of the execution application as the execution application already stand dismissed. Nothing stopped the Applicant to bring this position to the notice of the learned Judge immediately, if that was the position.

6. Even in the order under review, opportunity is given to the Petitioner to approach the Trial Court and seek liberty to apply for fresh application for execution. The Petitioners can always point out that since the execution proceedings are dismissed, there is no question of withdrawal of the same.

7. In the circumstances, no purpose will be served by condoning the delay in the Civil Application and recalling the order dated 22 September 2013, which even otherwise does not foreclose any right of the Applicant. The Civil Application is rejected.

(N.M. Jamdar, J.)