

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 1215 OF 2015
WITH
CIVIL APPLICATION NO. 7 OF 2016 IN A.O. NO. 1215 OF 2015**

Kailash Baban Pathare ... Appellant/Applicant
Vs.
M/s. Giridhar Creations & Ors. ... Respondents

Mr. Avinash B. Patil, Advocate for the appellant/applicant.
Mr. S.S. Patwardhan, Advocate for respondent nos. 1 to 3.
Mr. Jaydeep Deo, Advocate for respondent nos. 14 and 15.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **16th February, 2016.**

P.C.:

Admit. The learned counsel for the respondent nos. 1 to 3 and 14 and 15 waive service. By consent, the Appeal is heard finally and decided at the stage of admission.

2. This Appeal from Order is directed against the order dated 17th April, 2015 passed by the 4th Joint Additional Judge, Small Causes and Joint Civil Judge Senior Division, Pune thereby allowing Review Application Exhibit 328 by which the order dated 10th March, 2015 rejecting Exhibit 320 and 323 was reviewed and those Applications were allowed. A Special Civil Suit No. 1311 of 2006 for specific performance was filed by respondent nos. 1 to 3. The suit was based on the Agreement of sale of land which is owned by defendant no. 1/developer and defendant nos. 10 and 11/sons of defendant no. 1. Pending suit, defendant

no. 1 died and defendant nos. 10 and 11 came in the shoes of defendant no. 1. However, defendant no. 11 has independently settled the matter with the plaintiffs/respondent nos. 1 to 3 and, therefore, the plaintiffs are having claim only against defendant no. 10/appellant. Defendant no. 10/appellant being the only son of defendant no. 1 was to be brought on record in additional status as legal heir of defendant no. 1. So, the plaintiffs/respondent nos. 1 to 3 have moved an application Exhibit 135 for bringing defendant no. 10 as legal heirs of defendant no. 1 and it was allowed. However, as the amendment was not carried out within the stipulated time, another Application Exhibit 323 was made for extension of time and bringing defendant no. 10 as legal heir of defendant no. 1 on record. Application Exhibit 320 was made for amendment in the plaint under Order VI Rule 17, as the defendant no. 10 was brought in the shoes of defendant no. 1 and hence he was entitled to take appropriate defence of defendant no. 1. Therefore, the plaintiffs wanted to bring consequential amendment in the pleading. However, the learned trial Judge by an order dated 10th March, 2015 rejected both the applications. Thereafter, another application (Exhibit 328) was moved for review under section 114 read along with Order XLVII Rule 1 of Code of Civil Procedure that the order passed under Exhibits 320 and 323 be reviewed and thus the Applications be allowed. The said application was contested, however, the submissions made by learned counsel for the plaintiffs/respondent nos. 1 to 3 was

accepted and allowed the Application Exhibit 328 in which the order dated 10th March, 2015 rejecting Exhibit 320 and 323 was reviewed and those Applications were allowed. Hence this Appeal from Order was preferred.

3. The learned counsel for the appellant has submitted that this order of allowing the review is to be set aside, as it is not as per the scope of Order 47 Rule 1(c) of Code of Civil Procedure.

4. The learned counsel for the respondents has supported the order passed by the learned Judge allowing the Review Application. He submitted that considering the facts of the case and as the learned trial Judge has dismissed both the Applications by giving only one reason that it is filed beyond the time required to be rectified and the amendment sought under Order VI Rule 17 of Code of Civil Procedure was pursuant to the order allowing the Application for bringing defendant no. 10 as legal heir of defendant no. 1. The trial Court has considered that there was some error apparent on the face of record and hence, this order is to be maintained.

5. At the time of hearing the submissions of learned counsel for both the sides, it appears that the learned counsel for the appellant is not keen in pressing the order of review allowing Application Exhibit 323 which is about bringing the legal heir of defendant no. 1 on record, as the said order of bringing legal heir was already passed while allowing similar Application

Exhibit 315. However, the order of review of Application Exhibit 320 which was under Order VI Rule 17 of Code of Civil Procedure is contested. The learned trial Judge while allowing the review application has given reason that he did not consider Application Exhibit 319 and it is an error apparent on the face of record. So also he did not consider the provisions of Order 22 Rules 3 and 4 of Code of Civil Procedure because the appellants quoted wrong provision as the application was made under Order I Rule 10 or under Order VI Rule 17 of Code of Civil Procedure. I do not think this reasoning is correct to bring the case within the ambit of review under Order XLVII Rule 1(c) of Code of Civil Procedure. This cannot be said as a mistake or error apparent on the face of record. The learned trial Judge while rejecting these two applications has given a reasoned order and has also discussed the case laws. The said order may be erroneous, however, it cannot be reviewed unless it is covered under the scope of Order XLVII Rule 1. Therefore, the order dated 17th April, 2015 in respect of Application Exhibit 328 is hereby set aside and the order dated 10th March, 2015 in respect of Application Exhibit 320 is restored. Against this order, the plaintiffs/respondent nos. 1 to 3 are at liberty to take appropriate proceedings.

6. Appeal from Order is allowed. In view of this, Civil Application is also disposed of accordingly.

(MRIDULA BHATKAR, J.)