

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

**CIVIL APPLICATION NO. 1638 OF 2016
IN
REVIEW PETITION NO. 4 OF 2016
IN
SECOND APPEAL NO. 144 OF 2015**

Shri. Narayan Posha Patil ... Applicant
V/s.
Smt. Indu Govind Patil ... Respondent

Mr. Machhindra Patil for the Applicant.
Mr. Shivshankar Patil for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 14/10/2016**

PC.:

. Heard learned Counsel for the parties.

2 By this civil application, the applicant original petitioner is seeking to rehear the Review Petition No. 4 of 2016 which was decided on 07.10.2016.

3 In the present proceeding, the petitioner defendant filed Review Petition No. 4 of 2016 to review the order dated 23.10.2015 passed by this court in Second Appeal No. 144 of 2015 with civil application No. 277 of 2015, on the basis of Apex Court Judgment in the matter of *Prakash & Ors. V/s. Phulvati & Ors. reported in 2016 SAR(civil) page 81.*

4 The learned counsel for the applicant submits that at the time of argument on Review Petition, the learned counsel for the Respondent made a statement before this court that the Apex Court judgment in the matter of Prakash & Ors. (supra) is subsequent judgment to the order dated 23.10.2015 passed by this Court in Second Appeal No. 144 of 2015. The statement made by the learned counsel for the respondent was accepted by him. Hence, the Review Petition was dismissed by dictating order to the stenographer in first session on 7th October, 2016.

5 The learned counsel for the applicant moved before this court after giving notice to other side on the ground that by mistake, it remained on his part to point out that the Apex Court decided the case in the matter of Prakash & Ors(supra) on 16.10.2015 i.e. before the impugned order passed by this Court on 23.10.2015 in Second Appeal. He submits that Advocate for Respondent refused to accept notice of production of matter on same date at 2.00 p.m. Though the learned counsel for the respondent was intimated, he remained absent. Hence, the applicant preferred the present civil application.

6 The learned counsel for the applicant submits that if matter is mentioned for recalling the order/rehearing before signing the order, the court can rehear the same. In support of his contention the learned counsel for the applicant relied on the Judgment of this court in the matter of ***Deokabai Ganpatsingh Solanke & ors. V/s. Miraj Hiranman Ingle and ors., reported in 2001(1) Mh. L.J. 600***. Paragraph 3 & 4 of the said judgments reads thus:

“3. Today the learned Counsel for respondent No. 4 has taken objection for rehearing of the matter by relying upon the

decision of the Apex Court reported in AIR 1988 SC 371, *Vinod Kumar v. Banaras Hindu University and others*, to contend that since the judgment was pronounced in the open Court, though not signed, the Court has become *functus officio* for which it would be impermissible for this Court to rehear the matter. This objection has been countered by the Counsel appearing for the petitioner by relying on the same judgment in para 8 of the said decision which is reproduced thus :

"There may be exceptions to the rule, for instance, soon after the judgment is dictated in open Court, a feature which had not been placed for consideration of the Court is brought to its notice by Counsel of any of the parties or the Court discovers some new facts from the record. In such a case the Court may give direction that the judgment which has been delivered would not be effective and the case shall be further heard. There may also be cases though their number would be few and fair between where when the judgment is placed for signature the Court notices a feature which should have been taken into account. In such a situation the matter may be placed for further consideration upon notice to the parties. If the judgment delivered is intended not to be operative, good reasons should be given".

4. In my view since the Counsel for the petitioner submits that certain vital aspects of the case have not been looked into, including the decision of the Division Bench of this Court, it would be expedient that the matter is reheard and decide in accordance with law. The learned Counsel pointed out that the petitioner No. 1 is already 71 years of age and pendency of the matter requiring the petitioner to take recourse to other proceedings would unnecessarily delay the matter. It appears from the proceedings that this Court expressed concerned for the pendency of the matter particularly because the petitioner No. 1 was already 70 years old widow and fighting the litigation for number of orders. In the circumstances, I am of the view that to do substantial justice in the matter, and also because no prejudice would be caused to the respondents if the

matter is reheard with the able assistance of the Counsel for both the sides, and for arriving at a correct decision, it would be expedient to rehear the case. In the circumstances, I proceed to overrule the objection raised by the Counsel for respondent No. 4 and rehear the matter on merits.”

7 Considering the submissions made by the learned counsel for the applicant, the reasons disclosed in civil application and the judgment in the matter of Deokabai Ganpatsingh (supra), I am satisfied that applicant has made out case for recalling the order dated 07.10.2016 passed by this Court by which the Review Petition No. 4 of 2016 stands rejected.

8 Hence, following order is passed:

- a) Order dated 07.10.2016 passed by this Court (Coram : K.K. Tated, J) is recalled.
- b) Review Petition No. 4 of 2016 is restored on file for hearing on its own merits.
- c) Office is directed to place the review petition No. 4 of 2016 on board for admission on 19.10.2016.

(K.K.TATED, J.)