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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1973 OF 2016
IN
SECOND APPEAL NO.498 OF 2014

Smt.Swati S. Ambekar	...Applicant
V/s.	
R.K. Satarawala, since deceased through His.L.Rs. & Ors.	...Respondents

Mr.V.S.Talkute for the Applicant.

Ms.S.M. Dandekar for the Respondent Nos.1 to 3.

CORAM : R.D. DHANUKA, J.
DATE : 21ST DECEMBER, 2016.

P.C. :-

1. The papers are allowed to be produced at 3:00 p.m.
2. By this civil application, the applicant seeks condonation of delay in filing the civil application, seeks recall of the order dated 27th September, 2016 and seeks restoration of the Second Appeal No.498 of 2014 along with Civil Application No.1163 of 2014.
3. Mr.Talkute, learned counsel appearing for the applicant submits that the statement made by the learned advocate representing the applicant before this Court on 27th September, 2016 that the applicant had already removed the impugned structure and

seeks to withdraw the second appeal was on the mis-conception that the impugned structure was already removed in toto. He submits that the Government of Maharashtra is accepting the payment of rent in respect of the impugned structure from the applicant even till date. He submits that the remaining structure, which is on the suit land, does not affect the easementary right of the original plaintiff.

4. Ms.Dandekar, learned counsel appearing for the original plaintiff invited my attention to the order dated 15th April, 2009 passed by Smt.R.P. Sondurbaldota,J. In Second Appeal No.696 of 2008, which was filed by the applicant herein against the State of Maharashtra & others. She submits that the second appeal filed by the applicant herein arising out of the judgment and decree dated 26th April, 2007 in Regular Civil Suit No.324 of 2000, which was filed by the applicant for injunction came to be dismissed by this Court. She submits that the Supreme Court has already dismissed the challenge to the closure of Zhunka Bhakar Scheme. She submits that the Supreme Court has observed that the applicant has encroached upon the suit property which affects the easementary rights of the original plaintiff. She submits that the learned advocate representing the applicant had rightly made the statement before this Court and has withdrawn the second appeal and thus cannot be allowed to withdraw the said statement.

5. It is not in dispute that the Supreme Court has already dismissed the petition challenging the closure of Zhunka Bhakar Scheme. The second appeal filed by the applicant (Second Appeal No.696 of 2008) in this Court arising out of the judgment and decree passed by the learned trial Judge and the first appellate Court *inter-alia* praying for injunction in respect of the suit property is already dismissed. No Special Leave Petition was filed by the applicant against the order dated 15th April, 2009 passed by this Court.

6. A perusal of the order passed by this Court on 10th August, 2016 clearly indicates that the statement came to be made that the structure was only partly removed. On 27th September, 2016, the learned counsel for the applicant made a statement before this Court that the applicant has already removed the impugned structure and sought liberty to withdraw the second appeal. This Court accepted the statement made by the learned counsel for the applicant and has dismissed the second appeal as withdrawn.

7. I am thus not inclined to allow the applicant to withdraw the said statement made before this Court consciously and in conformity with the statement made earlier before this Court on 10th August, 2016. The applicant has lost all through out in the earlier round of litigation and cannot be allowed to continue to occupy the suit premises.

8. No case is thus made out for recall of the order dated 27th September, 2016. The Civil Application No.1973 of 2016 is dismissed. No order as to costs.

(R.D. DHANUKA, J.)