

Before: Shri S.P. Mathkar,
Addl. Registrar (O.S.)/
Addl.Prothonotary and Senior Master.

Date: 25th February 2016.

HIGH COURT
O. O. C. J.
Review Petition No. 1 of 2016
In
Chamber Order No. 183 of 2015
In
Suit No. 3827 of 2003

Mr. Shashank Chandrakant Thatte and another. ...
Petitioner.

Versus

Parasmal Uttamchand Jain and Others. ...
Respondents.

Mr. G.K. Vishwanath with Mr. Ajit Agashe and Mr. Amit
Durgaprasad Bharadwaj, for Petitioners.

Mrs. Seema Chopda and Mr. Sujeet G. Kurup for
Respondents.

CALLED OUT FOR DIRECTION :

1. The above Review Petition No. 1 of 2016 is
taken out for review of Order dated 29th October 2015
passed in Chamber Order No. 183 of 2015 in Suit No. 3827
of 2003.

2. As per prayers to the Petition, the Petitioners are seeking to set aside the entire aforementioned Order dated 29th October 2015 as well as for permitting the Petitioners to cross-examine the Advocates for the Plaintiffs/Applicants to the Chamber Order for their admitted personal involvement in the conduct of the above matter.

3. When this Petition appeared on board on 2nd February 2016, the Advocate for the Petitioners tendered typed submission dated 2nd February 2016 and before handing over said typed submission Shri Shashank Thatte, the Petitioner No.1 by his hand writing, written his submission thereon and signed it before me. The contents of said hand written submission is recorded in Order dated 2nd February 2016. The aforesaid typed and hand written submissions were on that day taken on record. Thereafter, Mr. Vishwanath, read over aforesaid Order dated 29th October 2015 para-wise in support of Review Petition. On 2nd February 2016, Mr. Vishwanath read till second paragraph of page No. 7 of said Order. Thereafter, since the

Court time was over, on application of Mr. Vishwanath, hearing was adjourned to 8th February 2016 at 3.00 p.m.. On 8th February 2016, Mr. Vishwanath stated that he had not received earlier Order dated 2nd February 2016 and therefore, he expressed his inability to proceed further in the matter. Since, Order dated 2nd February 2016 was not ready and uploaded, on application of Mr. Vishwanath, hearing of the Petition was adjourned to 10th February 2016.

4. On 10th February 2016, Mr. Vishwanath tendered un-affirmed Affidavit and stated that same be treated as written submission on behalf of the Petitioners. The same was taken on record. Thereafter, instead of continuing reading from page No. 7 onwards of Order dated 29th October 2015 i.e. for continuing reading Order from the date of 2nd February 2016, he started reading written submission tendered on 10th February 2016. This written submission contained total paragraphs 28. He read upto paragraph 14 of said written submission. Thereafter, again, since Court time was over, hearing was adjourned to 16th February 2016.

5. On 16th February 2016, since, records and proceedings in above Suit matter was before the Court, hearing was adjourned to next date i.e. 17th February 2016.

6. On 17th February 2016, Mr. Vishwanath tendered another un-affirmed Affidavit of Petitioner No.1 and since same was un-affirmed, the same was returned back to him and thereafter he got it affirmed and tendered it again. Thereafter, instead of continuing his reading from paragraph No. 15 onwards on written submission which he read on 10th February 2016, as mentioned in paragraph No. 4 above, he started reading Affidavit tendered on 17th February 2016.

7. On 17th February 2016, Mr. Vishwanath stated that without deciding the issues, mentioned hereinbelow, he cannot argue in the matter. The said issues are (a) whether Advocates appearing for Respondents to the Review Petition can appear as Advocates for Plaintiffs in Suit by virtue of Order III of Civil Procedure Code 1908, (b) Whether Pleader can sign the Schedule annexed to the Chamber Order, (c) the Plaintiff No.2 has not appeared before the Court as he

has not declared the Plaint as well as not a party to the Affidavit in Support to the Chamber Order and (d) for acceptance of ratio given in authority/order reported in AIR 1993 SC 853.

8. On 17th February 2016, Mr. Vishwanath tendered one more written submission which, inter alia, recorded that till the issues raised in this Review Petition are decided, directions be given to the Office to hold back listing the matters before Hon'ble Court till such time the pleadings before this forum are completed.

9. I am to record hear that neither Order dated 29th October 2015 read completely for its review, nor any of the written submission and Affidavit of Petitioner No.1, dated 17th February 2016 was read completely. All these documents/pleadings and order were read in part on every subsequent date.

10. Mr. Sujeet G. Kurup, Advocate appearing for Respondents stated that above Chamber Order was filed within stipulated period. He further stated that it was not

denied that proposed Defendant Nos. 1(a) and 1(b) are not the legal heirs of deceased Defendant No. 1 and that right to sue survived against said proposed Defendants, upon the death of Defendant No.1, as per the cause of action mentioned in the gist of the Plaint and documents exhibited to the Plaint. Thereafter, this matter is placed today i.e. 25th February 2016 for Order dated 3.00 p.m. But today i.e. 25th February, 2016 at about 12.30 p.m., Mr. Vishwanath, upon giving notice to the Advocate for Respondents, mentioned this matter and tenders one more Affidavit duly affirmed on 25th February, 2016. Mr. Vishwanath brought my attention to paragraph 4 of said Affidavit and states that Plaintiff No.1 in above Suit i.e. Respondent No.1 herein, has already filed Affidavit on Oath dated 9th February 2016 averring that Defendant Nos. 1 and 2 to the Suit i.e. Petitioner Nos. 1 and 2 are not the owner of the Suit property. Mr. Sujeet G. Kurup states that reference to Affidavit given in said Affidavit dated 25th February 2016, is Affidavit-in-Reply to the Chamber Summons No.121 of 2016 filed in above Suit which will appear before the Court. This Affidavit in Reply cannot be considered here since said

Chamber Summons is to be decided by the Hon'ble Court.

11. I am to state that the grounds for review of said Order dated 29th October 2015, mentioned in Review Petition, aforementioned written submissions and Affidavit dated 17th February 2016, are already considered. Therefore, there is no need to pass order on the aforementioned issues raised by Mr. Vishwanath, before proceeding further with the hearing of said Review Petition.

12. The Order dated 29th October 2015 passed in Chamber Order No.183 of 2015 was passed as per power given to this forum under Rule 131(6) of High Court, Original Side Rules 1980. It was not denied that deceased Defendant No.1 is expired on 14th February 2015. The said Chamber Order was taken out within the period of 90 days from the date of death of the deceased Defendant No.1. It was not contested anywhere in Affidavit in Reply to Chamber Order as well as in written submission, tendered at the time of hearing of Chamber Order, that proposed Defendant Nos. 1(a) and 1(b) are not the legal heirs of deceased Defendant

No.1. It is mentioned in Plaint that Plaintiffs' claim for damage and loss are caused by the Defendants as per suit agreement annexed to the Plaint and therefore, right of the Plaintiffs to sue against the legal heirs of the deceased Defendant No.1 is survived.

13. In view of above, no case is made out for recalling aforesaid Order dated 29th October 2015. Remedy, if any, which is available to the Review Petitioners is to challenge said Order dated 29th October 2015 and, therefore, Review Petition is dismissed, reserving the right of the Petitioners to challenge said Order dated 29th October 2015.

25.02.2016

Addl. Registrar (O.S.)/
Addl. Prothonotary and Senior Master