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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.16742 OF 2015
IN
SECOND APPEAL NO.776 OF 2013**

Vilas s/o Popat Jadhav,
Age: 37 years, Occ: Agri.,
R/o. Shajapur, Tq. Kopargaon,
Dist. Ahmednagar.

..APPLICANT

VERSUS

1. Subhash s/o Popat Jadhav,
Age: 55 years, Occ: Agri.,
2. Satish s/o Subhash Jadhav,
Age: 28 years, Occ: Agri.,
3. Somnath s/o Subhash Jadhav,
Age: 26 years, Occ: Agri.,
4. Manda w/o Subhash Jadhav,
Age: 50 years, Occ: Agri.,

All R/o. Shajapur, Tq. Kopargaon,
Dist. Ahmednagar.

..RESPONDENTS

Ms A.N. Ansari, Advocate for applicant;
Mr A.V. Hon, Advocate for respondent Nos.1 to 4

CORAM : NITIN W. SAMBRE, J.

DATE : 8th SEPTEMBER, 2017

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ORAL ORDER :

This application is moved by original respondent, who has entered into compromise, which was recorded by this Court on 6th August, 2014 in the present second appeal. Prayers made in the application are as under :

(A) Civil application may kindly be allowed.

(B) Delay if any caused may kindly be condoned in the interest of justice.

(C) By allowing the civil application order dated 6/8/2014 in Second Appeal No.776 of 2013 be clarified to the extent that rest of the decree in RCS No.167 of 2007 dated 22/12/2011 except clause No.2 of operative part of it remains as it is and applicant can execute it.

OR in the alternate order dated 6/8/2014 be recalled and appeal be heard on its own merits.

(D) Any other just equitable relief, to which the applicant is entitle may kindly

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be granted in favour of the applicant.

2. Learned Counsel for the applicant-original respondent in the second appeal is pressing for above mentioned prayers amongst prayers made in prayer clause (C) "Or in the alternate order dated 6/8/2014 be recalled and appeal be heard on its own merits."

3. According to learned Counsel for the applicant, since the order of compromise recorded on 6th August, 2014 is not taken to its logical end viz., the applicant is not permitted to enjoy the property, which is passed on him by the said order, he intend to have hearing of the second appeal on merit. According to her, since the appeal was not decided on merit, the order recording the compromise needs to be recalled.

4. This Court, having considered the said contention, noticed that recording of compromise is not disputed including that of terms thereof.

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Prayer for recall is made purely based on the developments, which had taken place as a consequences of order dated 6th August, 2014 recording compromise. The grievance that is sought to be canvassed that pursuant to the order of compromise, the applicant is not permitted to enjoy the property by the respondents, as such, the order needs to be recalled and cannot be a basis for grant of such prayer, particularly having regard to the provisions of Order 23 of the Code of Civil Procedure, under which compromise is recorded.

5. In view of above, in my opinion, the prayer of the applicant for recalling the order dated 6th August, 2014 is liable to be rejected. The fact remains that settlement order/compromise is not questioned on merit on the ground of practicing fraud or otherwise.

6. However, the applicant is granted liberty to take such steps as are available in law for taking the compromise decree to its logical end.

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7. With the above observations, the application stands rejected.

(NITIN W. SAMBRE, J.)

Tupe