

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.518 OF 2017
(Dilip Vishwasrao Deshmukh Vs. Sarojini Jijabrao Deshmukh and others)

Mr.G.S.Rane, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 21/09/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 10/08/2016 by which the Trial Court has rejected application Exh.239 in RCS No.12/2012.
2. I have considered the strenuous submissions of the learned Advocate for the petitioner. Despite service of Court notice on the respondents, they have not entered an appearance either through an advocate or in person.
3. The grievance of the petitioner is that the father of the plaintiff namely Bapurao Bhagwantrao Deshmukh had suffered litigation under the Prevention of Corruption Act. He was finally convicted and his Session Court's Appeal as well as his criminal revision application before this Court were rejected by orders dated 17/08/1964 and 17/11/1964.

4. The petitioner desires to place a copy of the judgment of the Sessions Court dated 17/08/1964 in criminal appeal Nos.98/1964, 99/1964 and 100/1964, before the Trial Court in the suit. The facts about the case of Bapurao are better marshaled in the judgment of the Sessions Court. After applying to the Sessions Court for a certified copy of the said judgment dated 17/08/1964, it was informed that the entire record of those criminal appeals have been destroyed.

5. Rule 3(ii) under Chapter XV of the Bombay High court Appellate Side Rules, 1960, by which such records are to be preserved only for 30 years.

Rule 3(ii) of Chapter XV reads as under :-

"Papers to be preserved for 30 years - The following papers shall be preserved for 30 years :-

[1] Judgments and/or orders of High Court summarily dismissing appeals and applications.

[2] Paper-books or prints in cases in which a sentence of death or imprisonment for life is passed.

[3] Writ communicating final orders in applications decided under Articles 226 and 227 of the Constitution.

[4] Farad files, except farads of applications for interlocutory orders and applications necessary for the progress of the main proceeding."

6. Mr.Rane, learned Advocate for the petitioner strenuously submits that the copy of the judgment delivered by the Sessions Court dated

17/08/1964 may be available in the record of this Court in the criminal revision applications.

7. Considering his submissions, this matter was adjourned beyond lunch and the concerned Section Officer from the Certified Copy Branch Mr.Hanumant Rawanrao Jayabhay was requested to come to the Court Hall. In the presence of the learned Advocate for the petitioner, he has stated that copy of the judgment of this Court dated 17/11/1964 is preserved. However, the copy of the judgment dated 17/08/1964 delivered by the Sessions Court was returned to the Sessions Court. Record and Proceedings from the Sessions Court with regard to the 3 criminal appeals is not available in this Court.

8. Considering the above, the impugned order cannot be faulted. This petition, being devoid of merit, is therefore, dismissed.

9. It is, however, made clear in order to ensure that there is no miscarriage of justice, that the petitioner would be at liberty to take recourse to any permissible remedy in the pending suit with regard to proving of the judgment dated 17/08/1964 in Criminal Appeal Nos.98/1964, 99/1964 and 100/1964.

(Ravindra V.Ghuge, J.)