

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.5 OF 2013
IN
CIVIL APPLICATION NO.789 OF 2012
IN
CIVIL REVISION APPLICATION NO.167 OF 2004

Hardikar's New Shorthand and Petitioner
Typewriting Institute

Vs.

Smt. Pramila Narhari Paranjape Respondents
& Ors.

Mr. Prasad Chandrashekhra Hardikar, Constituted Attorney
for the Petitioner, present.

Ms. Chandana Salgaonkar, Advocate for Respondent no.7.

Mr. Amol Gatne i/by S.B. Deshmukh present
Ms. Deepa Ahuja, Advocate present.

Coram : Smt. R.P. SondurBaldota, J.
Date : 9th February, 2017

P.C.

1 Mr. Gatne, the learned Advocate for the petitioner
states that on 29th September, 2016, the petitioners have
discharged him as an Advocate and he no longer represents the

petitioners. Advocate Deepa Ahuja appears and states that she would now be appearing for the petitioner and seeks to file appearance of her instructing advocate. This change of advocate is happening after completion of arguments on behalf of the petitioner and respondent no.7. It is therefore an unhealthy practice and as such cannot be permitted. Mr. Prasad Hardikar, the Constituted Attorney of the Petitioner is present in the Court.

2 This review petition was argued fully by Mr. Anturkar, learned Senior Counsel, then representing the petitioner and by Ms. Chandana Salgaonkar, the learned advocate appearing for respondent no.7. After the matter was fully argued and the Court was about to pass the order, disposing off the petition, it was realised that the petitioner had not served notices upon respondents no. 1 to 6 and 8. Therefore, fresh notices were issued to these respondents made returnable on 19th August, 2016. The office note shows that the notices sent to respondent no.1 returned unserved because respondent no.1 was reported to have died on 19th August, 2013. As regards respondent no.3, the residence was demolished and the new building constructed in its place. Respondent no.8 was reported to have sold the residential flat and new address was not known, therefore, the notice was pasted on the old address. Respondent no.6 was not found at the time of service, hence notice was pasted on the residential premises of respondent

no.6. After issuance of notice to the respondents, the matter had appeared before the Registrar (Judicial) on three occasions i.e. 10th August, 2016, 14th October, 2016 and 17th January, 2017. On none of three dates, the petitioner was represented before the learned Registrar. On all the three dates, time was granted to the petitioner to take steps for service of notice upon unserved respondents. The petitioner has not taken any steps till date. As a consequence, the review petition against them is required to be dismissed and is hereby dismissed. With its dismissal against them it cannot survive against the remaining respondents. Therefore it is liable to be dismissed in its entirety on this ground alone.

3 As already mentioned, extensive submissions had been advanced earlier on the merits of the application by Mr. Anturkar on behalf of the petitioner and Ms. Salgaonkar on behalf of respondent no.7. It would therefore be only appropriate to consider the submission and give decision on the merits of the application also.

4 The limited purpose of this review petition is to seek deletion of the following portion from the order dtd. 20th Nov. 2012, "Though the old firm was registered with the Registrar of the Firm, the benefit of that registration could not be taken by the new firm which was required to be independently registered". The order in which the deletion is sought was

passed on the Civil Application taken out by deceased, respondent no.1 for clarification of two orders i.e. order dtd. 21st September, 2010 passed on the Civil Revision Application No.167 of 2004 filed by respondent no.1 and the order dtd. 15th October, 2012 passed on Review Petition No. 11 of 2010 filed by the petitioner.

5 The order dated 21st September, 2010 allows the Revision Application on the concession given by the petitioner herein that the firm bearing the same name as the petitioner which was registered on 21st May, 1968 stood dissolved by operation of law on 26th September, 1998 on the death of one of the partners. The petitioner sought review of this order by filing Review Petition No. 11 of 2010 only to withdraw it on 15th October, 2012. In that order, at the request of the learned counsel for the petitioner it was clarified that the concession rendered on 21st September, 2010 related only to the non-existence of the firm that was registered on 21st May, 1968 and argument in respect of registration of the firm was kept open.

6 The next application was by respondent no.1 i.e. Civil Application No. 789 of 2012 seeking clarification of the earlier orders. That was disposed off by the order dated 20th November, 2012, which contains the observation quoted hereinabove which is sought to be now deleted. The clarification sought by the petitioner was as regards the

advantage of, registration with the Registrar of Firms, available to the present petitioner-firm, which is constituted after the earlier firm in the same name was dissolved on account of death of one of the two partners. It was observed that since the old partnership that was in existence till 26th September, 1998 had only two partners, with the death of one of the partners, it stood dissolved by the operation of law and the new partnership firm though constituted on the same day, with three persons as partners is a new firm and it cannot take benefit of registration of the old firm, which ceased to exist on its dissolution.

7 The above observations being part of the opinion expressed by the court, there can be no question of deletion of the same. However, Mr. Anturkar sought to argue that the observation if maintained would set at nought the clarification given in the order dtd. 15th October, 2010 that “the concession rendered by the advocate for the petitioner in the order dtd. 21st September, 2010 related only to the non-existence of the firm, which was registered on 21st May, 1968, any argument available to both the sides in respect of the registration of the firm is kept open”. There can be no substance in the argument. The argument which was kept open as regards registration of the Firm, in the facts of the case, would necessarily be the requirement of registration of the new firm constituted, and not about extension of registration of the erstwhile firm. In view of specific observations in the order dtd. 20th November, 2012,

there was no question of the new partnership firm taking benefit of registration of the old partnership firm, which was no longer existence at the time of new partnership firm came into existence. Hence, the application is dismissed.

(Smt. R.P. SondurBaldota, J.)