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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.2 OF 2017
IN
SECOND APPEAL NO.475 OF 2015
WITH
CIVIL APPLICATION NO.1009 OF 2015

Mahipati D. Gaikwad & Anr.	...Petitioners
V/s.	
Bhagwan G. Gaikwad	...Respondent
Mr.Rahul S. Kadam for the Petitioners.	
Mr.S.R. Gunbavale for the Respondent.	

CORAM : R.D. DHANUKA, J.
DATE : 10TH APRIL, 2017.

P.C. :-

1. Mr.Kadam, learned counsel appearing for the review petitioner invited my attention to the written statement filed by his client before the learned trial Judge and also various paragraphs of the order passed by the learned trial Judge as well as the first appellate Court and would submit that though the review petitioner had raised the plea relying upon the provisions of the Prevention of Fragmentation and Consolidations of Holdings Act, 1947 before the learned trial Judge and also before the lower appellate Court, the learned counsel for the review petitioner could not point out before this Court the plea raised by his client in the written statement or

before the lower appellate Court.

2. My attention is invited to the order dated 31st January, 2017 passed by the Supreme Court granting liberty to the review petitioner to withdraw the said Special Leave petition and to file the review in regard to the plea under the provisions of the Prevention of Fragmentation and Consolidations of Holdings Act, 1947. Learned counsel fairly states that in view of the limited liberty granted by the Supreme Court and in view of the order passed by this Court on 13th October, 2016 in respect of the other issues decided by this Court earlier paragraph of the said order has attained finality. This Court be pleased to review the said order in respect of the issue about the effect of the provisions of the Prevention of Fragmentation and Consolidations of Holdings Act, 1947 on the transaction in question.

3. Mr.Gunbavale, learned counsel appearing for the respondent states that there would be no effect of the said provisions on the issue in question and thus order passed by this Court shall not be recalled.

4. I therefore, pass the following order :-

a). The order dated 13th October, 2016 is recalled insofar as the effect of the provisions of the Prevention of Fragmentation and Consolidations of Holdings Act, 1947, if any, on the subject matter of the dispute between the parties is concerned. It is made clear that all

other issues which were raised by the review petitioner in the second appeal before this Court and which are already decided in paragraphs 1 to 8 of the order dated 13th October, 2016 are concluded and cannot be reopened.

b). It is made clear that the review petitioner is not permitted to agitate any other issue except to the extent of effect of the provisions of the Prevention of Fragmentation and Consolidations of Holdings Act, 1947 on the subject matter of this dispute, if any, as mentioned in paragraph 9.

c). It is also made clear that this Court has not expressed any views as to whether there would be any effect of the provisions of the Prevention of Fragmentation and Consolidations of Holdings Act, 1947 on the subject matter of the dispute.

d). The review petition is disposed of in aforesaid terms. No order as to costs.

e). The Second Appeal No.475 of 2015 is restored to file along with Civil Application No.1009 of 2015 for the limited purpose as directed aforesaid.

f). Place the second appeal before the regular Court on 24th April, 2017 for admission.

(R.D. DHANUKA, J.)