

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 50 OF 2017

IN

WRIT PETITION NO. 2191 OF 2016

Babulal Prabhulal Daiya	]	Petitioner
Vs.		
The State of Maharashtra & Ors.	]	Respondents

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Mr. P.V. Dhopatkar, for applicant.

Mr. A.R. Metkari, A.G.P, for respondent No.1.

Ms. Pushpa H. Goswami, for respondents No. 2(1) to 2(3).

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CORAM : R.G. KETKAR, J.

DATE : 7th NOVEMBER, 2017.

P.C.

Heard Mr. Dhopatkar, learned Counsel for the petitioner, Mr. Metkari, learned A.G.P, for respondent No.1 and Ms. Goswami, learned Counsel for respondents No. 2(1) to 2(3) at length.

2. By this Petition u/s 114 r/w Order- XLVII, Rule-1 of the Code of Civil Procedure, 1908 [for short 'C.P.C'], petitioner has sought review of the order dated 30th September, 2016 passed by this Court in Writ Petition No. 2191 of 2016.

3. In support of this Petition, Mr. Dhopatkar submitted that there are several errors of law apparent on the face of the

record and therefore, this is a fit case for reviewing the order dated 30th September, 2016. In particular, he invited my attention to paragraph 11 of the order. In paragraph 11, the impugned order is referred as order dated “**27.08.2016**” when actually the impugned order is passed on “**27.08.2015**”. He further submitted that on 30th June, 2017, petitioner/defendant had filed substantive appeal and not an application under Order-IX, Rule-13 of C.P.C. He, therefore, submitted that order deserves to be recalled, thereby restoring Writ Petition to its original position and deciding the same on merits.

4. On the other hand, Ms. Goswami submitted that Bailiff report dated 6th February, 2017 shows that petitioner has voluntarily handed over possession to respondents No. 2(1) Mahendra Chandrakant Sawant on 4th February, 2017 and, therefore, no case is made out for recalling the order.

5. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record.

6. In paragraph 11, there is a typographical error in mentioning date of the impugned order. It should be read as “**27.08.2015**” instead of “**27.08.2016**”. Order stands corrected accordingly.

7. In so far as contention advanced by Mr. Dhopatkar that defendant had filed substantive appeal and not an application under Order-IX, Rule-13 is concerned, no material is produced to

substantiate the said contention. In fact, in paragraph 12, it was made clear that if at all the petitioner has filed proceedings under Order-IX, Rule-13 of C.P.C, he is at liberty to prosecute the said proceedings.

8. In any case, now as the petitioner surrendered possession on 4th February, 2017, no case is made out for recalling the order as decree is already executed and hence, Petition fails and the same is dismissed. Order accordingly.

[R.G. KETKAR, J.]