

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

CIVIL APPLICATION NO. 923 OF 2018
IN RAST/318/2018
WITH
REVIEW APPLICATION (STAMP) NO.318 OF 2018

SUNIL HUKMICHAND CHHAJED DIED LRS SANGITA SUNIL CHHAJED
AND OTHERS

VERSUS

M/S MISHRILAL BAKHTAWARMAL AND CO. AND OTHERS

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Advocate for the Applicants : Shri Shah Subodh P.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th January, 2018

Per Court:

1 Since the learned Advocate for the Applicants was ready to address the Court even on the Review Application, keeping in view that the delay caused was minor of only 08 days, the Civil Application seeking condonation of delay is allowed without imposing costs.

2 I have considered the strenuous submissions of Shri Shah, learned Advocate appearing for the Review Applicants, who seek review of the order of this Court (Coram : Nitin W. Sambre, J.) dated 28.11.2017, by which, Writ Petition No.6880/2012 has been dismissed.

3 Shri Shah has drawn my attention to the nine grounds formulated by him and has canvassed each ground specifically. He also

places reliance upon the judgment of the Honourable Supreme Court in the matter of Banwari Lal vs. Balbir Singh, 2016 (1) SCC 607, to contend that in matters of bringing the legal heirs of the deceased party on record, the Court should avoid looking at technicalities of procedure though the prescribed procedure cannot be circumvented. However, it should look at the larger interest of the litigating sides.

4 I have gone through the order passed by this Court, which is a speaking order in which the contentions raised by the Applicants in this Review Application were also canvassed and considered.

5 The Applicant before the Trial Court was seeking leave to bring on record the legal heirs of the deceased person Sunil Hukmichand Chhajed. The dispute between the parties is with regard to the Partnership Firm and family members are involved. Sunil's father Hukmichand is the real brother of Lakhichand Chhajed, whose father was Misarilal. Rukhminibai, wife of Lakhichand, is the real aunt of Sunil. After Lakhichand passed away, his wife Rukhminibai and three sons are brought on record, out of whom, Dilip is at issue. Dilip died on 24.04.1999 which means that the first real cousin brother of Sunil passed away. Despite the real cousin brother having passed away on 24.04.1999, Sunil moved an application Exhibit-127 on 12.07.2006 which is after more than seven years. That application came to be rejected by the order dated 12.01.2011, which was impugned in Writ Petition No.6880/2012. No steps were taken

by Sunil to serve the legal heirs of the deceased Dilip on the spurious plea that one Advocate Jamil Pathan had undertaken to appear on behalf of Defendant No.3.

6 I have, therefore, perused the so called purshis submitted by Advocate Jamil Pathan dated 27.10.2010 wherein, he submits that he has received information about appearing on behalf of Defendant No.3, but he has not received any Vakilpatra and therefore, he would seek time to file the Vakilpatra. Now, Defendant No.3 had already passed away and there was no issue of Advocate Jamil Pathan appearing on behalf of a deceased person by collecting his Vakilpatra. Factually, Defendant No.3C (Dilip) had passed away and rest of the legal heirs of the deceased Defendant No.3 (Lakhichand) were already on record.

7 While considering the submissions of the Review Applicant in the Writ Petition, this Court has concluded that the suit was about 27 years old. As it was instituted in 1990 and because of the casual attitude of Sunil, the Trial Court has rejected the application Exhibit-127.

8 The Honourable Supreme Court, *Lily Thomas vs. Union of India*, **AIR 2000 SC 1650**, has laid down the law that when it comes to consideration of a Review Application, the same is not to be considered as if the entire petition is being re-argued. An error apparent on the face of the order must be clearly shown.

9 Considering the facts in this matter before me, I do not find

that the order passed by this Court (Coram : Nitin W. Sambre, J.) dated 28.11.2017 would reflect any error apparent on the face of record. The Review Application being devoid of merit is, therefore, rejected.

kps

(RAVINDRA V. GHUGE, J.)