

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

**Civil Application No.1704 of 2018
In
Review Application Stamp No.28524 of 2017
In
Writ Petition No. 8397 of 2017**

Sulochanabai w/o Laxman Kolhe. .. **Applicant.**

Versus

The State of Maharashtra
And Others. .. **Respondents.**

Shri. Milind Patil, Advocate, for applicant.

Shri. R.V. Dasalkar, Assistant Government Pleader, for
respondent Nos.1 and 2.

Shri. V.D. Hon, Senior Counsel, instructed by A.V. Hon,
Advocate, for respondent No.4.

Coram: T.V. NALAWADE, J.

Date: 9 February 2018

ORDER:

1) Civil Application No.1704/2018 is filed for
condonation of delay caused in filing review application.

2) Notice on this civil application. Learned Senior
Counsel Shri. Hon waives the notice for contesting

respondent No.4. There is no need of hearing the other respondents as they are not the contesting respondents. Learned Senior Counsel is heard.

3) The application is allowed. Delay of 20 days is condoned. Review application is to be registered separately. Notice in the review application. It is waived by learned Senior Counsel Shri. V.D. Hon for respondent No.4.

4) In the review application also both the sides are heard. Learned counsel for the applicant submitted that though this Court has observed that the counter claim was entirely in respect of other property, the petition came to be dismissed when for the reasons given the petition ought to have been allowed. He submitted that on that day he was not present and somebody was holding for him and proper submissions were not made and due to that the order came to be passed.

5) It appears that the petition was filed by the plaintiff who has filed suit for relief of mandatory

injunction for pulling down the so called illegal construction made by the respondent. In the said suit the defendant No.4 has filed counter claim. At this stage there is no need to ascertain the nature of the counter claim which needs to be done separately on merit in the writ petition. But it can be said that due to over sight and by presuming that the plaintiff was getting relief in the present matter, this Court made order of dismissal of the petition. The order needs to be reviewed and the matter needs to heard on merits. So, the review application is allowed. The order made on 5-7-2017 in Writ Petition No.8397/2017 is recalled. The writ petition is restored to its original number. List the petition for final disposal on 15-2-2018 in urgent category.

Sd/-
(T.V. NALAWADE, J.)

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