

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO.139 OF 2018
IN WP/518/2017

DILIP VISHWASRAO DESHMUKH
VERSUS
SAROJINI JIJABRAO DESHUKH AND OTHERS

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Advocate for Applicant : Shri Rane Girish S.
Advocate for Respondent 1 : Shri Sawant Amol S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 13, 2018
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PER COURT :-

1. I have heard the learned Advocates for the respective sides.
2. A peculiar situation has arisen in this matter. An application Exhibit 239, in RCS No.12 of 2012, was filed by the petitioner / original defendant, praying for a direction that a special messenger be appointed to collect the copy of the judgment in Appeal No. 98 of 1964 filed in Criminal Revision Application Nos. 826, 776, and 829 of 1964 and the documents be produced before this Court.
3. The trial Court had rejected Exhibit 239 since the record of the District Court in Appeal No.98 of 1964 was already destroyed and the messenger need not be appointed as concerned parties must keep a copy of the judgment of the High Court and preserve it. It was

concluded that this petitioner is attempting to prolong the litigation.

4. The petitioner approached this Court in Writ Petition No.518 of 2017, which was dismissed as Rule 3(ii) under Chapter XV of the Bombay High Court Appellate Side Rules, 1960 prescribes preservation of records for 30 years and the copy of the judgment dated 17.8.1964 was returned to the Sessions Court. The observations of this Court in paragraph No.7 of the order are as under:-

"7. Considering his submissions, this matter was adjourned beyond lunch and the concerned Section Officer from the Certified Copy Branch Mr. Hanumant Rawanrao Jayabhay was requested to come to the Court Hall. In the presence of the learned Advocate for the petitioner, he has stated that copy of the judgment of this Court dated 17/11/1964 is preserved. However, the copy of the judgment dated 17/08/1964 delivered by the Sessions Court was returned to the Sessions Court. Record and Proceedings from the Sessions Court with regard to the 3 criminal appeals is not available in this Court."

5. After filing of the review application, this Court directed the Record Branch on 30.9.2018 to get the record of Criminal Revision Application No.827 of 1964. After perusing the said record, a copy of the common judgment dated 27.8.1964 delivered by Shri J.A.Hussain, learned Sessions Judge, Jalgaon in Criminal Appeal Nos.98, 99 and 100

of 1964 has been traced out. This judgment is a certified copy running into 101 pages, obtained from the Court of Sessions, East Khandesh, Jalgaon, bearing the original signature of Shri J.A.Hussain, learned Sessions Judge.

6. Though Shri Sawant, learned Advocate has strenuously opposed this application, he had no option but to concede that this copy of the judgment now can be produced before the trial Court. He submits on instructions, that his learned colleague appearing before the trial Court had offered a say on Exhibit 239 that 'a just and proper order could be passed by the trial Court'.

7. In view of the above, this review application is allowed. My order dated 21.9.2017 is recalled and Writ Petition No.518 of 2017 is allowed. Consequentially, the impugned order of the trial Court dated 10.8.2016 is quashed and set aside. Application Exhibit 239 is partly allowed with the following directions:-

(A) The learned Advocate for the applicant Dilip Vishwasrao Deshmukh is permitted to move an application for seeking a certified copy of the certified copy of the judgment dated 27.8.1964 delivered by Shri J.A.Hussain, learned Sessions Judge, Jalgaon in Criminal Appeal No. 98 of 1964 (The said judgment is a common judgment delivered in three appeals).

(B) The concerned section of this Court would supply a certified copy of the above stated order, expeditiously.

(C) The record section of this Court shall make an effort to preserve the said judgment dated 27.8.1964.

(D) This applicant shall produce the certified copy of the above stated judgment before the trial Court in RCS No.12 of 2012, within two weeks from the date of receiving the certified copy from this Court.

(E) The trial Court would adjourn the pending proceedings to enable the compliance of this order.

8. The concerned Section Clerk of this Court was summoned and the documents pertaining to the Criminal Revision Application No.827 of 1964 were handed over to him so as to be preserved in the record room.

(RAVINDRA V. GHUGE, J.)

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