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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.716 OF 2016
IN
REVIEW PETITION NO.9 OF 2015
IN
S.C. SUIT NO.7421 OF 1980.**

Narendra Mahadev Kambekar	...	Appellant.
V/s.		
Shree Krishna Woolen Mills Pvt. Ltd and ors	...	Respondents

Mr. Yatin R. Shah, for the appellant.
Ms. Zahra Padamsee i/by Vashi & Vashi, for
respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th AUGUST, 2018.

P.C. :

- 1] Heard learned counsel for the appellant and respondents.
- 2] Admit.
- 3] With the consent of learned counsel for both the parties,
appeal is taken up for final hearing at the stage of admission itself.
- 4] In this Appeal from Order, an exception is taken to the
order dated 20th October, 2015, passed by City Civil Court, Mumbai,
thereby allowing the Review Petition No.09 of 2015 and setting aside

the order dated 7th March, 2015 passed in Chamber Summons No.1939 of 2014.

5] The said Chamber Summons was filed by the respondent herein under Order XXII Rule 9 of Code of Civil Procedure to set aside abatement of suit. The trial Court has vide its order dated 7th March, 2015, rejected the said Chamber Summons on the ground that there was delay of about 8 years in filing the same to bring on record the legal heirs. Accordingly trial Court has abated the suit and also dismissed the Counter Claim

6] In the Review Petition filed by respondent before the trial Court, for the first time, it was brought to the notice of the trial Court that the suit was remanded in Appeal and in the Appeal, the legal heirs were brought on record. It was also pointed out to the trial Court in the Review Petition that this fact was, however, not brought to the notice of the trial Court when the earlier order dated 7th March, 2015 was passed.

7] In view thereof, the trial Court has, in the Review Petition, considering the judgment of the Apex Court, in the case of **Rangubai Kom Sankar -vs- Sunderbai Bhratar Jedhe [AIR 1965 SCC 1794]** held that when the legal heirs were already brought on record in the appeal, after the matter was remanded to the trial Court, the order bringing the legal heirs on record in the appeal would enure for the

further stages of the suit. It was further held in this judgment that if in appeal, the amendment is carried out and the legal heirs of party are brought on record and if the suit is remanded back for trial, it is not necessary for the plaintiff again to carry out amendment in the suit and to bring on record the legal heirs of defendant and the suit does not abate for want of it.

8] In view thereof, in the Review Petition, the trial Court has, in the opinion of this Court, rightly considered that this legal position was not brought to its notice when the earlier order dated 7.3.2015, was passed. It was also not brought to its notice that in the appeal, the legal heirs were brought on record and therefore, it was merely a formality to bring those legal heirs on record in the suit. Thus, the trial Court has rightly found that there was “an error apparent on the face of record” as the relevant fact was not brought to its notice. In my considered opinion, in view thereof the trial Court has rightly allowed the Review Petition and set aside the earlier order passed on 07.03.2015.

9] The submission of learned counsel for the appellant is, however, that merely because there is some change in the legal position, the Review Petition cannot be allowed. To substantiate his submission, learned counsel for the appellant has relied upon the judgment of Allahabad High Court, in the case of **Gyan Chandra**

Dwivedi -vs- 2nd Additional District Judge, Kanpur and other, [AIR 1987 Allahabad 40], and on the judgment of Gujarat High Court in the case of **Patel Naranbhai Jinabhai -vs- Patel Gopaldas Venidas** [AIR 1972 Gujarat 229]. However, it can be seen that in the judgment of Allahabad High Court, review was sought on the count that decision on question of law, on which order was founded, was reversed by Supreme Court in subsequent decision and in view thereof, it was held that the Review was not maintainable. Similarly in the judgment of the Gujarat High Court, the decision was given by the Apex Court after the impugned order was passed.

10] As against it, in the present case, the legal position is not changed. Only the relevant fact that in the appeal the legal heirs were brought on record, was not brought to the notice of the trial court when the earlier order was passed. As per legal position laid down by the Apex Court, in the judgment of **Rangubai Kom Sankar -vs- Sunderbai Bhratar Jedhe (supra)**, once the names of legal heirs are brought on record in appeal, then it enures for the further stages of the suit. Therefore, it is merely a formality to bring on record the legal heirs in the suit. Thus, apparently there was an error on record when the trial Court has rejected the application by its earlier order, as material and relevant fact was not brought to notice of the Court. When this fact was brought to the notice of the trial Court, it was

necessary to correct the error. Hence no fault can be found in the impugned order passed by the trial Court in allowing the Review Petition.

11] The Appeal, therefore, being without merit, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]